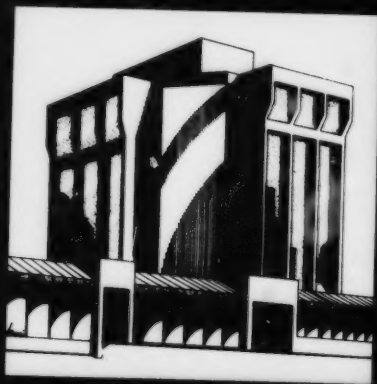
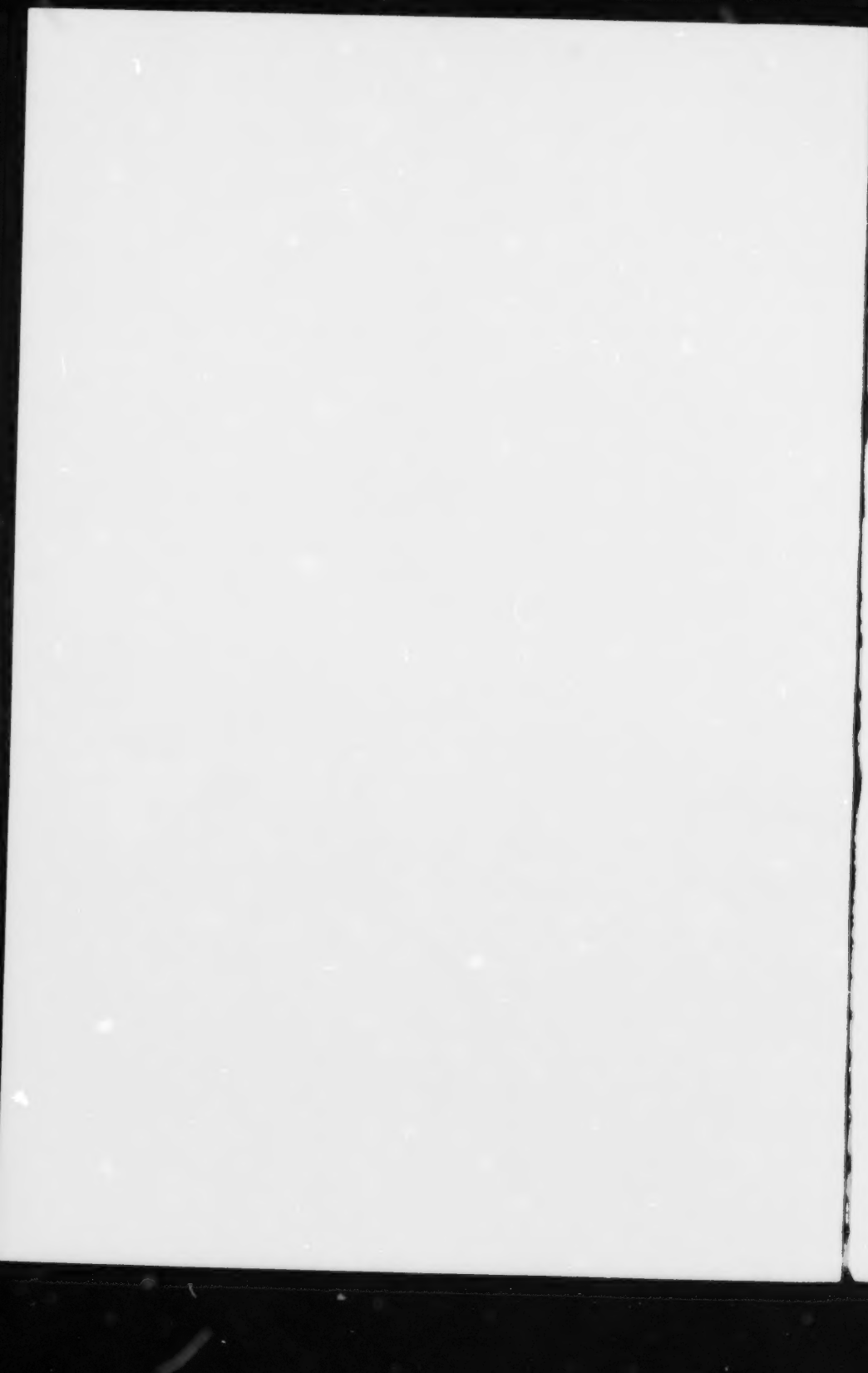


POLICING

The Evolution of a Mandate



Canadian Police College



POLICING: THE EVOLUTION OF A MANDATE

Allan K. McDougall

Department of Political Science
University of Western Ontario



The Canadian Police College

A Canadian Police Service of
The Royal Canadian Mounted Police

Distributed by
Research and Program Development Branch
Canadian Police College

Policing: The Evolution of a Mandate

Allan K. McDougall

NOTE: The views expressed are those of the author and do not necessarily represent those of the Canadian Police College or any government department or agency.

RCMP GRC

Published by:

Canadian Police College
P.O. Box 8900
Ottawa, Canada
K1G 3J2

© Minister of Supply and Services Canada (1988)
Cat. no. JS 62-55-1988E
ISBN 0-662-15984-5

Également disponible en français sous le titre L'évolution du mandat policier.

CONTENTS

	Page
SUMMARY	iii
PREFACE	v
CHAPTER I: Review of the Police Mandate Today	1
CHAPTER II: Pre-Dawn	11
CHAPTER III: The Dawn of Time - The Law and The State	25
CHAPTER IV: Police in the Modern Era	41
CHAPTER V: Police Leadership - Its Place, Potential And Problems	61
BIBLIOGRAPHY	77

SUMMARY

The mandate and social function of the modern police can be traced historically to the creation of a "new police" as part of the English reforms of the early nineteenth Century. The place and potential of police leadership in the United Kingdom, the United States and Canada rest on that early police mandate and its subsequent evolution in the social, ideological and structural context of each country.

The three countries share a common heritage. The General Quarter Sessions with their appointed constabulary was its last common manifestation under the modern state. From that institutional setting, Jeffersonian and Jacksonian democracy emphasized local autonomy while entrenched elite rule in Canada accentuated central control as the municipal structure with its police component evolved. British policing also developed with greater emphasis on autonomy post-1850 than its Canadian, and less than its American, counterparts influencing and being influenced by events in North America. This study traces the broad evolution of the "new police" and their mandate in an attempt to access the relative position and potential of police leadership in each country. It is hoped that the contrasts will yield insights into differences in police issues in the three states, and to the relative place of professionalism in the police rhetoric in each.

Finally, the study reviews policing in England before the creation of the modern state. As a common ancestor it offers insights which provide tools for the solution of some present police problems stymied by the assumptions underlying the liberal democratic state. Among them lies the potential of recognizing community responsibility and the legitimacy of diverse police services to reflect pluralism.



PREFACE

The question of police leadership in Canadian society is fraught with threats and challenges to our basic assumptions of good government. Those challenges and their implicit potential, are found at the specific level of crisis intervention, at the broader level of crime prevention, and at the broadest level of policy development. Police leadership if unfettered, could pose a serious challenge to our methods of controlling the exercise of power by the state. This monograph attempts to address the concept, and the potential, of police leadership not by focusing solely on contemporary police practices but instead, after recognizing the legal and political context within which the police manager works, by searching through the roots of our traditions in an attempt to define the mandate, and thus the place, of the police and finally the place of the police leader in our society. Only when that is settled (or at least the inconsistencies in the position of the police clarified) does the mandate of the police lend itself to analysis as a passive, or an active, agency at the grand scale of international or national security, at the more moderate level of the community, and at the specific level of criminal or deviant activity. At all levels, the conflict between collective rights and individual freedom charges the atmosphere. Any review of police leadership thus suffers not only because the police mandate is unclear but also through its proximity to fundamental ideological cleavages within our society.

The issues which must precede a substantial discussion of police leadership are profound, and no monograph can address them adequately. Instead, the place of the maintenance of the public order, or preserving the peace, will provide a theme to unravel the ancestry of modern policing with reference to two major variables -- the state and community. Only when one recognizes the place of agents of social control in the context of state power and community tolerance can one understand the traditional role of the constabulary and other peace officers. That evolution was not without its deviations and was plagued with failures, but out of it came the confused traditions which we have inherited and which form the substance of the police mandate today. Contradictory expectations surround the police: as a person on the street interacting with the public; as a manager deploying scarce resources; or as an agent which can invoke the power of the state and which thus must be controlled in any society which values individuality.

In recent years, the pluralistic character of our urban centres has accentuated the tensions surrounding the role of agencies exercising, or attempting to exercise, some control over the limits of human behaviour in a social context. As immigration to Canada has shifted from western Europe to include significant numbers from more diverse cultural backgrounds, the range of public stereotypes of policing has grown. Within ethnic communities, traditional tensions, indigenous criminal patterns, and the

frustrations of melding with a different culture pose challenges for agents of the Canadian state. Given the differences we as Canadians have over our own expectations of the police on class, economic or empirical criteria, ethnic diversity has added new challenges to the legally rooted assumptions of equality under the law. But, those same legal principles provide the mechanism through which we control the exercise of state power. Policing and police leadership must bridge the gulf between the uniformity demanded by the legal principles, fundamental to the control of the power of the modern state, and the demands of local communities. When those local communities are diverse and poorly defined, and when they are located within a broader society which is also divided on its expectations of the police (as we find especially in larger urban centers) the potential for police leadership ranges from managing resources to spanning social chasms.

In the last twenty years sociologists, psychologists and criminologists have contributed to the study of policing in its community and legal contexts. Police programs have been evaluated, police governing structures questioned, and the place of the police as a social service analyzed. Alternative methods of designing, monitoring and providing police services have been proposed, and at times the conclusions have threatened traditional police practices and structures. Their findings have opened the door to questions previously invisible (or at least relegated to the "folk wisdom" of practitioners) when the legal profession and administrative experts dominated the field of police studies. The purpose of this monograph is to review the police mandate in its present guise, trace its early genealogy before the present "legal time" or legal context began, and then to use that history to review the place, potential and possible limits on the police and their capacity through leadership to contribute to the solution of those social problems we face in Canada today.

C.S. Lewis in his "children's" story, The Lion, The Witch and The Wardrobe, (1950) provides an image of the potential of delving deep into our social traditions to ferret out the relationship between state and community before the extended legal system defined the framework through which state power is visibly exercised over us. Aslan, a great lion, has just risen from the dead after being killed by his wicked adversary, and Susan, one of the children in the story, is asking for an explanation:

"But what does it all mean?" asked Susan when they were somewhat calmer.

"It means," said Aslan, "that though the Witch knew the Deep Magic, there is a magic deeper still which she did not know. Her knowledge goes back only to the dawn of Time. But if she could have looked a little further back, into the stillness and darkness before Time dawned, she would have read there a different incantation. She would have known that when a willing victim who had committed no treachery was killed in a traitor's

stead, the Table would crack and Death itself would start working backwards" (1950: 132-133).

As we study policing, the "new police" is seen as the start of modern policing. The reforms of Henry Fielding in the Bow Street Parish seem an appropriate start and The Rural Police Act of 1856 an appropriate end to the period. The formation of the Metropolitan Police in 1829 is defined as the customary threshold. The assumption is valid, given the gulf between the reforms generated in the 1749-1856 period and the old constabulary. Those reforms were part of a sweeping reform movement covering the whole range of social control legislation from public health to the poor laws and penalties under the criminal law. The context for those reforms rested in the belief that the power of the state was ultimate and could only be exercised over the individual through duly passed statutes. That belief coincided with the emergence of the autonomous individual and a new economic order at the start of the 16th century. Our concept of state dawns at this point in history, as does the legal context which we now assume for policing. There were, however, complex problems of social control which predated the modern state. In that murky era, the efforts to preserve the peace while acknowledging diversity between communities, and individuals within those communities, remained a central theme of governing. Then, as now, the state encouraged and protected the economic order, guaranteeing contracts (The Statute of Merchants, 1283), protecting traders (The Statute of Winchester 1285, Magna Charter 1215, c. 41.) and the right to retain private property (Magna Charter 1215, c. 9, 20, 25-31, 52ff.) The conquering Normans, as a foreign elite, were also favoured in law enforcement (Statute of Winchester, 1285.) The use of state power to preserve the peace thus has a constant theme of protecting the structures of governing and the fundamentals of commerce.

The lessons in social control this history offers are derived from the differing place of community and law in the "pre-modern state" era. The lessons thus challenge the formalisms of legal dogma and the resultant insights provide alternative truths as we probe current questions raised by social scientists who share an interest in police-community relations. That will be the purpose of this monograph. Sadly, it does not pretend to offer an alternative truth but only the vantage point from which to roll backward our preoccupation with legal formalism so that new substance can be added to the debate over the mandate of the police and the potential of police leadership in the community and the state.

This monograph will focus on systemic implications of the police mandate and police leadership. The Research and Program Development Branch of the Canadian Police College and especially Dr. Don Loree have helped in the development of this study and have initiated studies into police-community relations in various regions of Canada. The results of those studies, when combined with the excellent empirical work already completed by members of the Branch, should provide grist for further work and the eventual

translation of police leadership into specific topics. In the interim this monograph will hopefully add to the overall discussion of police leadership and pose questions from outside our current context or time.

My thanks go to Drs. Don Loree, Rick Linden and Elizabeth Riddell-Dixon for their help in the preparation of this work.

A.K.M.

CHAPTER I: REVIEW OF THE POLICE MANDATE TODAY

In reaction to the potential return of capital punishment, Cardinal Carter of Toronto defined the police role as "guardians of life". Nearby, at the Centre of Criminology at the University of Toronto, Richard Ericson, after a careful analysis of police patrol activity, concluded that the job of the police was to "reproduce order". In so doing, the police mandate was:

To employ a system of rules and authoritative commands to transform troublesome, fragile situations back into a normal or efficient state whereby the ranks in society are preserved. This is to be done according to means which appear to be of the highest quality and is directed at the appearance of good and firm government. (1982: 7).

Ten years earlier, the Task Force on Policing in Ontario suggested that the police role had shifted since the 1940s to become less personal and more law enforcement-oriented:

Modernization of policing, emphasizing various kinds of technological innovation, has shifted the role of policing from that of peace officer to that of law officer. The change has taken place at the point of contact between police officer and citizen. It is characterized by a reduction in personal contact ... between the citizen and his policeman. In addition, it is characterized by a greater emphasis on law enforcement than on the service aspects of police work. In many respects, it has made police work more impersonal, more case and incident oriented, and less concerned with the continuity of relationships with the community. (1973: 7).

The Task Force struggled with the advantages of responsiveness to community demand as inherent in the peace officer image, and the professional standardization possible in the law officer image. Both were found to occur in varying proportions and to be reflections of the style of various police forces in the province or of different divisions within the larger Metropolitan Toronto and Ontario Provincial Police Forces.

Over the last decade, students of policing have extended a more relativistic model of the police mandate, linking it to general concepts such as "order maintenance". (For a good example, see G.L. Kelling, 1987, and James Q. Wilson and G.L. Kelling, 1982). Such concepts reflect a new concern for integrating the police with the community in contrast to the pendulum swing to impersonal policing noted by the Task Force on Policing in 1973. Erik Nordholt and Ries Straver, in their article "The Changing Police," capture the tenor of that change. Reporting on the work of a Project Group on Organization Structures appointed by The Netherlands Police Directorate of the Ministry on Home Affairs and

the association of police chiefs for that country in 1975, they suggest a legitimate role for the police in defining their community context:

The function of the police implies making a contribution to society (which has to be integrated with other administrative and judicial functions) in the form of social control which not only contributes to the protection of social achievements but also creates the conditions for social development and renewal aimed at achieving the essential values of our democracy. (Nordholt and Straver, 1983: 38).

The implications of this addition to the traditional police mandate of the maintenance of order and law enforcement are closer linkages to the community, a more open management style, and the continual redefinition of police objectives so that they reflect social change. (Nordholt and Straver, 1983: 43). John Alderson, a former Commandant of the Police Staff College at Bramshill in the United Kingdom, has extended the discussion of the police mandate in a thoughtful article "Police and Social Order" which appeared in Police and Public Order in Europe (Roach and Thomaneck, 1985). Writing after the Searmen Inquiry into the riots of 1981, he grappled with the community-police relationship in a rapidly transforming society. Assessing the impact of the police on society, he wrote pointedly:

Sensitive use of police is much more important in this sense where social conditions are bad. Where social conditions are good, insensitive use of police will result in complaints through formal channels provided for such contingencies; where they are bad they will result in riot. (1985: 25-26).

He then continues to reflect on the police system, extending the "law officer" disadvantages as described by the Task Force on Policing in Ontario:

But the police system is no longer as well placed as it was to respond to social diversity, to feel the impulses of small communities in their varied circumstances, needs and desires. Where there is no dialogue there can be no understanding, where there is no accountability there is no compulsion to serve The more complex a social order becomes the more the services which tend to its needs require the flexibility to adapt to local as well as regional and national circumstances. However, there is in fact a divergence of interest and perception. Thus whilst British society has become infinitely more diversified and pluralistic the services upon which it depends, including the police, have become more remote and bureaucratic. (1985: 26).

Two factors were seen as challenges to police-community linkages: police professionalism and bureaucratic policies. Police professionalism spawned the definition of a police mandate which accentuated crime control, "technological modernity and reactive efficiency." Crime fighting and order maintenance thus were accentuated by the police as their definition of their job. The public, on the other hand, defined police services on "human qualities, skills, understanding and problem solving" (Alderson, 1985: 28). Large regional forces with detailed internal procedures, and police professionalism accentuating a self-defined police mandate, are thus seen by Alderson as drawing the police service away from community. In offering a solution to this problem, Alderson extended his horizons to encompass the tenor of the British political system concluding that the police failures reflected a failure of democracy. He concludes with a statement worth quoting at length:

The combination of defective democracy, the absence of a Bill of Rights enshrined in our domestic laws, the continuing economic deterioration and laissez-faire policies are all leading to a divided nation. All of these factors are likely to increase reliance on the criminal sanction and to lead to increases in repression and surveillance, thereby fundamentally shifting the place of the police in the social order (1985: 29).

His response was to institutionalize community-police communications at the Metropolitan, district and local levels in Metropolitan London. Their purpose would be to prime the:

... well-springs of democratic activity ... This would not be another tier of government but a forum or platform to generate local initiative, action and concern. A Ministry for Community Affairs and local government Community Affairs Committees would share the responsibility for setting up and nurturing them (1985: 30).

Alderson thus adds concern for the health of the community to the police mandate. Strengthened neighbourhoods with close linkages to the decentralized police structure were also the prescription of the Project Group on Organizational Structure in The Netherlands. Combined, they reflect the current broader mandate of policing as illustrated again by Alderson:

... The police role in the social order is primarily that of keepers of the peace, and preventors of crime. This function can only be activated where the primary level of activity is rooted in neighbourhoods (1985:31).

Order maintenance, the reproduction of order, the preservation of life, the preservation of the peace, the prevention of crime all describe a broad social function for the police. Law enforcement describes a narrow mandate for the police. The former

involves a wide array of strategies as recognized by Ericson in his study of police patrols. It also may extend to police leadership in support of the processes of community, even though formally the police remain servants of the law. The following description is typical of the narrower, law enforcement mandate:

In a democratic society such as Canada, the police are required to act within the framework of a legal system which recognizes and gives effect to democratic values. They remain accountable to courts of law for their conduct, and in the final analysis to the people through their elected representatives at various levels of government (Grindstaff, 1974: 74).

The assumption is that the police have been delegated power by the community through law. The police mandate thus equals the totality of the legal powers granted the police and the rule of law demands that the police not exceed their legal mandate. The contrast between the social function and this legal mandate are central to any study of police leadership.

Theoretical Context

The way the police exercise force within our society not only has a profound impact on how we enjoy individual liberty and freedom but also adds to or detracts from individual acceptance or rejection of the state. In Canada, since we are now independent of Great Britain, the country is seen as sovereign. That means Canada has the capacity to regulate its own affairs without external interference, or holds the humanly unlimited power to regulate affairs in its geographic territory. Given our approach to governing, the power of the state is exercised through law. Thus sovereignty is the capacity to make the ultimate law over a geographic territory and is the essential characteristic of a state. The organization which exercises power in the name of the state is the government. In Canada a constitution defines what portion of the potential power of a state can be actually exercised by government. Some things are excluded from all governments by the Charter of Rights, others by a division of powers which authorize the central government in Ottawa to legislate on some items such as the criminal law, and provincial governments to make laws on others such as the administration of justice.

The state and sovereignty are theoretical constructs. Sovereignty signifies the ultimate power to rule over a specific geographic territory. The state's boundaries coincide with that geographic territory and include recognition that the ruler in that territory has ultimate authority to regulate affairs within it. The methods of operating a state are legion. In western liberal democracies, power is exercised through law. Thus law becomes our defence when as individuals, we attempt to control arbitrary action by our rulers or their agents. They cannot exercise more power over us than is defined in law. The police, as law enforcement officials, or as employees of the state with

responsibility for the maintenance of order, are thus highly visible agents of the state and, for persons concerned that state power is controlled in the name of liberty and freedom, a prime focus for surveillance.

On the other hand, the police work with members of society and need community support if they are to maintain order effectively. In a stationary, homogeneous society the job of order maintenance would fall primarily to community devices. Today, society tends to be heterogeneous. Don Loree (1985), provides an interesting overview of the ethnic, racial, linguistic, religious and economic cleavages in Canadian society. Such pluralism is especially significant in urban centers. Loree defines the concept as follows:

... Pluralism remains indicative and reflective of heterogeneity of interests, abilities and power within a given social system. In the Canadian context, and for our present purposes, pluralism refers to a situation in which many diverse groups ... compete for power and influence within a broadly defined democratic political process (1985: 391).

Commenting on the perception members of such diverse groups have of the police, Loree continues:

... As heterogeneity increases, the likelihood of voluntary consensus decreases in the light of particular interests (1985: 410).

The police thus have the challenge, as posed by Alderson, of either reflecting the diverse mosaic of society and enhancing the self-definition of neighbourhoods so that that is possible, or of retreating into a legal formalism or police professionalism which may isolate the police from the diverse elements which now characterize the society they are policing.

Regardless of what course they choose, the police are caught between the state and society. They thus hold a significant position in defining how the one sees the other. As the French political scientist Bertrand de Jouvenel wrote:

If the man who is "dressed in a little brief authority" treats private citizens rudely, contemptuously and even brutally, his conduct will be imitated by private citizens; they will see in it a way of showing themselves superior. If the ruler so behaves, they think that so behaving will get a man taken for a ruler. If, on the other hand, the least important citizen is treated by the authorities with politeness, and if the ruler behaves with greatest consideration this attitude will be imitated in relations between citizens (1957: 119).

De Jouvenel then noted, before the recent riots, "the courtesy of the police in England is a formative element of the general behavior" (1957: 119, fn.1). Broadly speaking, the style of policing will have a direct impact on the citizen's view of the character of the rulers, and thus general acceptance of the state. That style, of course, is a reflection of the local traditions and culture, but it is also an instrument of socialization in the personal and political contexts. Both levels are significant as one addresses the issues of the police mandate and potential of police leadership in western democracies and especially Canada.

Immense technical and demographic changes have transformed society and the state over the last century. In a pluralistic society bombarded by change, the challenge posed for police leadership is significant. Straddling the chasm between the state and society generated by rapid technological and economic change, the police are responsible for maintaining order when normal community controls fail. If the pluralistic view of society is accepted, the competition between groups for power in this uncertain atmosphere launches an unending political contest. The political system, through electoral processes and civil rights, provides the constitutional context through which liberal democracy operates. Acting within its constitutional limits the political system is supposed to force government, acting as the manifestation of the state, to adjust to changing social demands. If those in power represent an economic or social elite which uses the state to perpetuate their own interests, and if they cannot be dislodged by others, the state may become an agent of class interests. In such cases, political alienation can develop until the disaffected become a threat to that elite and may attempt to overthrow not only government but the state.

Theda Skocpol is a leading analyst of such social and political processes. In her book, States and Social Revolutions she defines social revolution as entailing a rapid change in the social structure and the political structure of the state (1978: 10-11). Such revolutions are provoked or triggered by some popular incident but disequilibria between society and the state have usually existed for some time (1978: 25). The state, or the governing structure exercising the power of the state, becomes an "arena in which conflicts over basic social and economic interests are fought out" (1978: 25). The state thus may be seen as an oppressor using force to control members of disadvantaged economic classes, or as the ultimate source of legitimate authority over a geographic territory. The image reflects the eye and values of the beholder. Otwin Marenin has an interesting summary of where this places the police. In his review article, "Police Performance and State Rule" he summarizes:

... the police are part of the political process by which states are created and by which they rule. Policing is first and foremost a policy, an attempt by the state to use organized force in the reproduction of social order and of the state itself. Such policies

create political reactions from groups in society which envision a different order and distribution of benefits and from the police themselves who may resist being used as instruments of repression. Second, the police manage order. Hence policing is always politicized as order is always seen, by some, as equal and inequitable. Third, policing always entails a mix of high and low policing, of repression and genuine service. Force is used to suppress dissent and challenges to the ruling groups yet can also ensure the safety of anyone. Fourth, policing is intimately linked to attempts by rulers to justify and legitimate their rule. Effective protection of life and property is a strong legitimating claim which states can and do make, and to sustain that claim states must occasionally act effectively in the interests of all. Last, policing is a political act by the police themselves which expresses their own interests and values as well as the interests encapsulated in the demands which they receive from outside their organization. In short, policing is the crucial political activity as it seeks to define and delimit the legitimate balance between domination and consent and establish the arena for non violent politics (1985: 112-113).

Within the structure of the state, governmental organizations develop a tradition or style of handling problems which were perceived as appropriate to the state and/or demanded by society. Once those agencies are created, their responsibility for the implementation and adaptation of policies demanded by society which fall within their functional mandate, has the potential for making them autonomous in the on-going political arena. In other words, as long as those agencies do not impinge upon fundamental interests of dominant elements in the community, or as long as they do not pose an "undue burden" on public finances, they can work with those elements in a pluralistic society, which share the agency's views, to design and implement specialized policy. (See J.M. Edelman, The Symbolic Uses of Politics, especially c. 2 and 3 as an illustration.)

At the level of social change, Skocpol describes the linkages between the dominant class, and their fundamental interests, and society as follows:

Although both the state and the dominant class(es) share a broad interest in keeping the subordinate classes in place in society and at work in the exiting economy, the state's own fundamental interest in maintaining sheer physical order and political peace may lead it -- especially in periods of crisis -- to enforce concessions to subordinate-class demands. These concessions may be at the expense of the interests of the dominant class, but not contrary to the state's own interests in controlling the population and collecting taxes and military recruits. (1978: 30).

This "generosity" is offset in times of crisis, however:

Loss of legitimacy, especially among these crucial (elite) groups, tends to ensue with a vengeance if and when ... the state fails consistently to cope with existing tasks, or proves unable to cope with new tasks suddenly thrust upon it by crisis circumstances. Even after great loss of legitimacy has occurred, a state can remain quite stable -- and certainly invulnerable to internal mass-based revolts -- especially if its coercive organizations remain coherent and effective (Skocpol, 1978: 32).

De Jouvenel's reference to the significance of the style of policing as a socializing agency (see above) illustrates this point.

At a less extreme level than social revolution, de Jouvenel discusses the problems of bridging the gulf between the centralized state and the members of society who have little or no direct access or personal knowledge of their rulers. His comments are even more relevant in a pluralistic society and echo Alderson's concern over the gulf between the police and society and his concern that neighbourhoods should be recognized in the name of democracy.

... The danger that its (the ruler's) proposals will not be unanimously accepted has been met by their conversion into commands, to which the subject learns the duty of obedience; lastly it has had put at its disposal means of constraint, whose intimidatory power supplies defect of natural authority. These means of constraint have had to increase with every detraction from the prestige of the person of the sovereign: when majesty goes out, the police come in (deJouvenel, 1957: 73).

He then comments in a footnote that, when France changed from a kingdom to a centralized modern republic, the transition was marked by a growth in the number of police (1957: 73, fn.2). Centralization aggravates the problems of state-society relations:

The more distant that an authority is, the more it needs a halo, or if no halo is available, the more policemen it will need. For this there are two reasons: one is that its remoteness no longer makes possible the play of natural ascendancy, the other that this same remoteness renders the authority's order less appropriate to those who receive them. When Primus (a natural leader in a small community) lived surrounded by his followers, the orders he gave were conditioned by the interaction of the members of the group; they had in relation to the group a quality of imminence, now replaced by a quality of transcendence. Clearly the first requirement in an authority is to be a manifest and immediate presence (de Jouvenel, 1957: 77).

The police as the agent of public order thus clearly is the agent of the ruler or state. Public visibility, service to community and law enforcement are all necessary aspects of the job, but the social and political environment are in constant change, and this poses a further dilemma. To de Jouvenel, the function of the ruler in a changing environment is:

... to ensure the reliability of the individual's environment. This can be done most easily in a society where individuals are chained to their routines, but that would be the very opposite of the society we want. We wish to encourage initiatives which make for change. Therefore the problem posed to the sovereign becomes very difficult; the social universe must be at the same time fluid, responsive to new initiatives, and a solid ground to which the individual may trust. The unexpected must be allowed to happen and legitimate assumptions must not be belied. An adequate degree of stability must be achieved in the face of change (1957: 200).

The process of adjustment and stabilization occurs within the society through education, family structures, political parties, and the church, to name a few agencies. Some push for change; others protect the status quo. It is up to the sovereign to monitor the balance between these groups "to repair the insecurity caused by initiatives, not to preclude them" (de Jouvenel, 1957: 300).

That balancing act is the essence of politics in our system of government. The ultimate allocation of state power occurs through law which defines the mandate of public and, indirectly, most private agencies. It constrains the liberty of individuals and limits the power of state agencies. The law thus provides the skeleton which regulates private and public relationships. The police as agents of state are significant generalists in that framework playing an especially significant role in that set of laws which link individuals directly to the state. But the society extends beyond law to include the entire range of human interaction. At this human level where people live, individuals experience crises or frustration or need assistance. There, the police are found. The social function of the police thus is closely tied to the general responsibility of the state for the maintenance of order, and also to the community for those abnormal events in the normal course of social existence. The duality is expressed in the police motto, "To Serve and Protect."

Conclusion

The chasm between the state and the community is bridged by our political processes and our socializing agencies. The mandate of the police in our society can best be summarized as maintaining order by acting as agents of state and representatives of the community in our pluralistic society. The potential of police

leadership is at once significant and threatening. Significant, if as Alderson argues, it is used to support the openness of the democratic processes. Threatening if it becomes a reactive force oppressing advocates of change, since in such cases the dynamics of state-societal dislocation are unleashed. The challenge of maintaining order in a pluralistic society, where the law sets uniform standards, adds to the challenge faced by the police. But, the legal framework defines the legal mandate of the police. It defines and limits the police power. As agents of state, the law enforcement model draws attention to, and subsequently surveillance of the coercive powers of the state. On the other hand, the police as representatives of community must reflect community expectations if they wish local support. In reflecting this balance, as Marenin commented, "the police constrain society yet they also constrain the state" (1985: 118).

Recent recognition of the importance of community-based policing has highlighted this tension. Professionalism, as long as it refused to acknowledge discretion but advocated crime control and law enforcement, could languish safely under the law or "the legitimate actions" of the state. Today, the police mandate remains legally defined. It must if the agents of state are to be controlled as power is exercised over us. But the police function to maintain order, preserve the peace, and prevent crime incorporates a broad social mandate. That broader mandate includes the provision of some stability in the face of change, the reflection of community diversity, if necessary the nurturing of neighbourhoods so they can be articulate, and the protection of those legal and procedural rights which underlie the dynamics of our liberal democratic traditions. All have a significant and troublesome political dimension.

The overlap with politics has been a theme in police history which begs clarification. In tracing the potential and the constraints on police leadership, this theme will recur throughout the monograph. Reverting to C.S. Lewis' quotation in the process, we will start before the dawn of the legal era. In that murky period, the significance of the state-community linkage may offer insights which we can use to unravel the genealogy of the police in the grand issues of state, and thus the status of police leadership in law and politics, today.

CHAPTER II: PRE-DAWN

Some important insights into the broad police function, and the relativity of the present police mandate, can be gained from a review of what would have been policing in the era before the dawn of the modern state. As an ancestor to our present traditions of state and society, thirteenth Century England provides the most appropriate illustration. It was a relatively stable period. The Norman Conquest was completed. The significance of commerce had not yet loosened the feudal bonds in local villages and the legal profession had not yet gained control of the law. The relevant significance of feudal relationships provide the alternate style of social organization necessary, if we are to distance ourselves from the legal formalities of the modern state. The process is aided by the availability of a good literature led by George Homans' English Villagers of the Thirteenth Century (1960).

The focus of this chapter is on methods of social control in feudal England both at the level of the community, which is analogous to the focus of much policing today; and at the level of state-community relations, which, as was shown in the last chapter, is central to issues surrounding the definition of the police mandate. First, it is necessary to introduce the very broad structure of the feudal state in England. Then, the social structure and operation of the manor will provide a picture of community mechanisms of social control. A brief review of the interplay between state and society, the place of the ancestors of actors in our present administration of justice system and some generalizations on their implications for policing will then conclude this chapter.

The Feudal System

In Thirteenth Century England, the King was ascendant, dominating the halls of power. Royal charters gave nobles the authority to govern regions of the realm almost on a franchise basis. Each noble in turn granted tenants or other persons the right to land within his domaine. Title to land, or the right to control it, rested on tracing the land grant back to a royal charter. The right to use the land was counterbalanced by a responsibility to pay a rent and/or to assume some community duty depending on the character of the tenure. The extent of the power of the noble and the obligations due the Crown were defined by the charter, or terms of the franchise, which granted land to the noble.

Overall, the system was designed to produce the resources necessary to meet the needs of local communities, the nobles, the monarch, the court and the realm. It thus was oriented toward the production of goods (land, crops, harvesting and taxes) and the marshalling of human and material resources as required. For example, in a time of war, the King could order his Lords to provide a fixed complement of soldiers, supplies and services and then send his sheriffs to implement the order. It fell to the

Lord to comply. Such levies if they became excessive or too frequent, could be seen as disruptive and lead to reaction by the Lords on behalf of their communities. Such confrontations sometimes led to an assertion of community or individual rights. If the nobles were successful the result might be a written agreement, forced on the King by the nobles. The Magna Charta of 1215 is the most famous of these constitutional settlements. These agreements, although based potentially in armed confrontation, usually reasserted the customs of the realm. Thus a review of early "constitutional" documents shows gradual change rather than dramatic shifts in power. For example, the Magna Charta of 1215 had a series of antecedents the most significant being the Charter of Liberties of Henry I in 1100.

At a less dramatic level, the King and nobles jockeyed to maximize their control of local resources. The annual assessment of the value of each manor, or the View of Frankpledge, was central to this game. Originally the Sheriff, as the chief officer of the King in a shire, would preside and ensure all persons in the shire were counted on the rolls (Homans, 1060: 325). This essentially set the tax base for the year and provided an audit of the affairs of the community and an inventory of the human and material resources available - should they be required by the realm. Gradually, many lords of manors, either through negotiating changes to their charter or by a local power play, assumed the View of Frankpledge. If successful, control of that function increased the autonomy of the lord in his domaine and let him collect the fines for all of the grievances presented to that court as well as to his local court, or hallmote. Such fines were a significant source of income, being assessed on individuals for non-attendance, as fines for parties in disputes or as fees for court action.

The Crown

A tension thus existed between the King and the Lord over the scope of their respective power or to put it more bluntly, their relative capacity to raise revenue from the community. The power to set the value of the holdings subject to the King's levy and to reap the benefit of judicial proceedings were significant, especially as the King sought additional revenue to fight wars. State officials led by the sheriff at the county level, and the system of royal courts nationally, played a major role in asserting state interests over manors. The Lord, on the other hand, controlled the land and the tenant farmers on that land. The organization of local production, the definition of rents and the proceeds from the manor court, the hallmote, all were crucial to his income. Over time the Lord managed to preempt the sheriff in return for services to the Crown. By the middle of the thirteenth century, Edward I decided to review these incursions into royal power and to reassert its rights unless a Lord could prove that the powers he exercised were delegated by his charter i.e., explicitly defined in his franchise. In 1274 Edward conducted an inquest into local government and in 1278 established the writ of Quo

Warranto. His action reflected a typical initiative by the state as it asserted its presence against local communities which still ran their own affairs in accordance with "custom immemorial".

The inquest was a group of people appointed by the King to travel throughout his realm and to determine the facts of a case or to answer a question posed by the Crown. When it convened its position was analogous to that of the justice of the royal court. Community representatives were required to attend and to report on crime, administrative affairs and to answer any question put by the court. The sheriff also reported the findings of his court. The justices heard testimony on oath, dispensed justice in the name of the Crown and levied fines or fees as they felt appropriate or as set by custom. Testimony could be in secret and the purpose could be to assess the honesty of local crown appointees, set a tax levy, inquire into local crime, or as in the case of 1274, discuss exactly how much royal power to raise money had fallen under the control of the local nobility.

Once the inquest of 1274 concluded, the solution was to require nobles, whose power was questioned, to prove they had the power to exercise control over local communities through a royal charter. By creating a writ, Quo Warranto, any person could challenge the power of the Lord by paying a fee to the King for the issuance of the writ. If the King or his advisers consented to issuing the writ, the Lord had to prove before the royal courts that he had the legal power to act. The writ reflected an increase in state power. It also posed a political challenge to the Lords.

The Lords reacted. Some had held their position since William's conquest, but they had no paper to prove it. The personal grant of rights was not atypical. Their reaction was emotional, and of enough validity that Edward compromised by accepting such claims as long as they predated the reign of Richard I. His decision thus formalized the franchise system and reflected a further institutionalization of the fabric of the state as the thirteenth century came to a close. (For a detailed discussion of this case see D.W. Sutherland, 1963: 6-7 and for a good overview of the continued rise of the Crown see Anthony Tuck, 1985).

During the earlier years of the thirteenth century the relations between the state and the manor were defined by customary interpretation of prerogatives, memory, custom "immemorial" and the words of the charter if it was written. On this rather fluid base, the Lord was master of the manor, while the sheriff was the chief officer of the Crown in the shire or county. The overlap between community and national law enforcement at the local level is found in the relationship between the hallmote and the courts of the shire and hundreds which came under the jurisdiction of the Crown.

Before that relationship is explored, it is important to review the status of the key personnel in the Royal Courts. The church provided clerical assistance for local courts of the Crown. Then, by an ordinance of 1072 responsibility for clerical support fell to the state and the position of justiciar was created to record the decisions of the hundred courts and the county courts overseen by the sheriff. Individuals were appointed for their knowledge of local customs but over time the financial and social potential of the county court position made it attractive to members of the nobility. Their interest, and family connections, challenged the dominance of the sheriff as the Kings' officer in the region (Harding, 1973: 52-53).

In 1166 at the Assize of Clarendon, Henry II ordered an inquest into the status of the Kings' peace across all England. In fulfilling their mandate, the two nobles dispatched from Henry's court to conduct the inquest attempted to hear the type of cases previously heard by the county justices, by holding court in one county after another. This travelling court innovation was extended in 1173 as Henry reacted to an abortive revolt by consolidating his personal control over the maintenance of public order. The realm was divided into six parts so that "justices (whom Henry selected) might pass through it on circuit and re-establish the laws which had been abandoned ..." (Harding, 1973: 53). These judges would hear cases at the shire level, deferring difficult decisions for the King himself. Henry II then undertook to hear such cases at his court, first through resident justices and then in person if necessary. By 1179 the numbers of touring justices had increased to 21 on four circuits (Harding, 1973: 54).

The centralization of the King's justice through circuit courts had a direct impact on royal coffers. In 1129-30, before Henry's reforms, the King's justices levied 162 fines which totaled £438 and 2722 marks. In 1176-7 his justices recorded 1215 fines "raising £2794 and 7625 marks" (Harding, 1973: 54). The centralization thus had its financial aspect, as well as providing the source for those decisions which were later codified into the "the Common Law."

For the first half of the thirteenth Century, the royal courts continued to tour the counties hearing cases which involved free men or significant criminal matters. The sheriff remained the chief representative of the Crown in the county, acting on behalf of the Crown to levy taxes, checking the state of armaments, and conducting inquiries on behalf of the Crown into local affairs or local administration. The Sheriffs Court, or Tourn, was the senior local court of the Crown. Under it the community was divided into groupings of families, hundreds, which were subdivided into subsets of ten, called "tythings." Each group selected a representative to act as its spokesperson to the outside world. The headman in speaking for the group to a court or inquest also bound the group to keep the peace. If fugitives were harboured by members of the group, if crime occurred in the

group or if persons failed to assume their responsibility for law enforcement, the group answered to the Sheriff in the Sheriff's toun, where they were liable as a corporate entity (Harding, 1973: 64-65). Constables were employed by the sheriff to implement his orders or the edicts of the crown. For example, if the sheriff was asked to investigate the status of roads or bridges in an area, he could dispatch a constable to check and report to him at the next court. Or, if the inquiry came from the Crown, the constable would report to the royal justices as they gathered information on "hundreds" across the country.

The hundred was the unit of population represented in the royal courts. The courts required the attendance of twelve Knights or freemen from each hundred and four from each village to report on incidents in their community, to confirm the reports of their headman, local constables or coroners, and to attest to the validity of grievances raised by individuals before the court, given the customs of the community. All other members of the community were required to attend the "hundred," and the sheriff's tounfrankpledge. The justices did not interpret a law, as much as listen to reports, learn local customs and decide an appropriate remedy. Their job was to maintain the King's peace by settling disputes, ensuring the system of community law enforcement was working and by conducting inquiries into community affairs. Their actions, as we have seen, also provided significant revenue for the Crown.

At the start of the thirteenth century, the sheriff had been removed from the hearing of cases. His jurisdiction was limited to the determination of whether a person should be held for trial before the travelling justices. Chapter 24 of the Magna Charta, for example, precludes the sheriff, coroner, constable or other Crown bailiffs from hearing pleas. The list includes those officers of the Crown which investigated criminal incidents on behalf of the Crown, collected taxes or conducted inquiries into the status of local affairs. [The removal of the sheriff occurred in 1194 when the form of "proceeding on the judicial visitation" was set. This document stated that a sheriff could not act as a justice in his "shrievalty". (Item 21)]

The Manor

The division of jurisdiction between these officers and courts of the Crown, and the Lord and his hallmote is significant. Freemen, knights and others of higher social status had the right to be tried by their peers before the royal courts. Villagers (villiens) and farm labourers (cotters) were tied to the land, the Lord's manor, and thus were subject to the jurisdiction of the hallmote. The hallmote focused on this community. The reeve was the elected head of the villagers and organized production for the Lord. The royal "hundred" was also comprised of such villagers and cotters but it did not reflect the manorial community. Thus a hundred family group in a village formed an "hundred court" for purposes of preserving the King's peace, and

also part of the villiens of a village under a Lord. The hundred was led by a hundred man, the village by a reeve. They need not be the same person. The former was responsible to the Crown for the preservation of the peace in his group. The latter was responsible to the Lord for the operation, and peace, of the community. There often was duplication in positions, although sometimes there was not. The reeve was usually selected as one of the four persons to represent a "vill" or village at royal courts, but the structure of manor and royal court was not necessarily parallel nor hierarchical. They were different. Villiens and cotters were subject to their manorial court and the rules of the Manor. Freeman and Knights were subject to the royal courts. All were subject to the royal courts, however, for the preservation of the King's peace.

The context for the relationship between Lord and Crown was prescribed by the customs of the realm as known to the inhabitants or as enshrined in past edicts of the Crown. For the peasant, social order rested in the community and custom immemorial. Appeals could be made to the Crown if community mechanisms were seen as unfair or failing to meet guarantees set by earlier constitutional undertakings. In this latter case, reference to past charters, statutes and edicts of the Crown became significant and remedy could be sought by any person or group willing to pay for a royal writ. The writ, if granted because a royal court felt the complaint was well founded, could precipitate an inquest into the affairs of the community to ensure that they did not violate the customs of the realm or that the Lord had not exceeded his mandate (See Homans, 1960: 274-7).

A brief insight into the process is provided by Homans as he describes an incident which occurred in Shropshire in 1275 as follows:

"... The abbot had not kept the settlement of 1243, in which he promised not to increase the services of his tenants, and his tenants evidently believed that he was not to be trusted to keep this new "pact". In any event, in the next year of the reign, a writ was issued directed to the sheriff of Shropshire "on the part of the tenants of the Abbot of Hales Oweyn," requiring the sheriff to make inquisition by a jury composed partly of Shropshire and partly of Staffordshire men, concerning the wrongs complained of by the tenants. The inquest was held in June 1276, and drew up a schedule of the customs of the tenants which was substantially the same as that of the settlement of 1243 except that it ended the following way: "And they say that the said King John granted the manor subject to the same services by which the lands were held of him" (1960: 279).

The quotation illustrates the role of sheriff; the place of the peasant as plaintiff and jury; and the significance of custom. The memory of the jury at the inquest was later shown to be flawed

since there was "no such clause in the foundation charter" (Homans, 1960: 279) but such procedures enforced custom on the Lord and accentuated the significance of constitutional commitments by the Crown. In other cases, the Lord was absolved simply because the power to raise rents was included in the charter granting him control of the land.

Walter Ullmann, a leading scholar on feudalism and the place of the citizen as the feudal system waned, described the status of the peasant in England as follows:

"Customary law was not the outcome of a deliberate enactment by a superior law-giver, but was the result of usages and ... The practices which by common consent were based on tacit agreement matters concerning ordinary, daily life were ruled by custom, ..." (1966:59).

Custom resided in the experiences of the members of each community, not with experts. Thus the process of making community decisions by bylaws (later bylaws) or in resolving disputes fell to members of the manor or village gathered together in the local community forum which usually preceded the hallmote. At those meetings, disputes were resolved, rules for the community set, and community grievances or demands enunciated. These could even be against the Lord. The Lord of course, could retaliate by fining the community for inappropriate behavior. For example, an entry in the hallmote court role for Branham, Wilts in 1295 went as follows: "All the customers (villagers) made fine because they made a common seal in contempt of the Lord" (Homans, 1960: 332). The Steward, who presided as the representative of the Lord had obviously reasserted his master's position.

Each manor was an independent entity. The Lord governed in accordance with the mandate granted by his charter and with the custom of the community. Those customs were detailed, but remembered orally, and provided the routine on which the life of the villagers unfolded. Thus, they were not tampered with lightly. The royal courts were attempting to generalize custom as the basis of the developing "Common Law" but such generalizations did not extend to the affairs of the manor. There, local traditions held.

A village within a manor and its inhabitants fell under the control of the Lord. He controlled mobility in and out of the manor; gave permission and collected a fee for marriages; and oversaw the affairs of his domaine. The village usually included fields, private gardens and the houses of the community. A reeve was elected by the community, as it gathered prior to the hallmote, to oversee farm production. A steward represented the Lord by presiding at the hallmote when disputes were heard or when manorial business was conducted. A bailiff maintained the ledgers of the manor. These officers of the manor acted on behalf of the Lord. The reeve also represented the inhabitants being chosen

from the tenant farmer (or villein) class. The Steward and Bailiff were usually freemen.

The village was clearly divided by class. The Knight was the wealthiest. The freeman, or franklin, was the next wealthiest. Both had enough land to hire others to farm for them. Their service to the Lord thus rested on military, administrative or commercial endeavours and their rent was paid in that type of service or in currency. The lower classes, or tenants, held their land at the grace of the Lord in law, and by custom and heredity in practice. The villagers (villeins) paid for their land by labour and by turning over some of their produce to the Lord. The villein held land, often had a private garden and lived in a house in the village. The cotter, on the other hand, sold his labour, usually did not have a private garden and lived in a smaller house or a row house in the village. The villeins and the cotters were subject to the hallmote and the Lord for all aspects of their lives. The Knights and the freemen were classes apart and enjoyed access to the royal courts should they be involved in disputes.

Dispute resolution on the manor at the hallmote thus applied to the tenant farmers and farm labourers. The Steward presided but did not rule. Instead, all tenants in the community were required to attend the court. Members of the community would present their complaints. The Steward would then refer the complaint to a jury of peers to determine if the complaint was in fact a violation of the customs or rules of the community. If they held it was, the accused had the chance to clear his name by bringing forward other community members to vouch for him. If he produced five or eleven depending on the severity of the charge he was seen as innocent. In a similar way, the person raising the grievance had to have others in the community vouch that it had occurred.

Custom was known to members of the community. It regulated planting, plowing, trespass, harvesting and even the quality of ale. Disputes were resolved through reference to past custom as known to members of the community. Fines were levied, and payable to the Lord at a level also set by custom.

Should situations change or the sheriff announce a special levy on the area by the Crown the hallmote also assumed an executive role. Special taxes imposed on a village were allocated to members of the community through the hallmote. Corporate planning insofar as it existed also occurred there. For example, Homans records an illustration of the community acting as a corporate entity in dealing with its Lord:

"Sometimes the community of a village entered into negotiations with the Lord as if it were a corporation which could hold property. To a court of 1296, for instance, came the community of the villeins of Brightwalton, Birks, and surrendered to the Lord, who was the Abbot of Battle, all the right of common which they claimed in the Lord's wood called Hemele, and in return the Lord

surrendered to the community his common in Eastfield and in the villein's wood called Trendale, making other concessions as well" (Homans, 1960: 330).

Such corporate action was the forerunner of greater transfers of power for self-government to the tenants in the hallmote in return for cash payments to the Lord. Such delegation and compensation was to become more common as the cash economy grew in the fourteenth century.

At a less general level, villagers meeting in conjunction with the hallmote, could pass bylaws. These related to questions of village husbandry. Members of the village were elected (in Northern England as Bylawmen and in the south as custodes statutorum autumnpi) to enforce the special harvest bylaws. The resultant cases were heard in the hallmote. One illustration from Halton in 1329, although after the turn of the century, is typical.

"... that no one may make paths, by walking, driving or carrying corn, over the corn of another to the damage of the neighbours, by night or at any other time. Also, that no one hereafter may gather in the fields beans or green peas save between half of prime and prime. And these ordinances are to be observed under pain of 6s 8d. And Philip Atte Lynch (and five others) are sworn in to see that these ordinances are observed, to attach offenders against said ordinances, and to present them at the court following, as many and as often as they are found" (Ault, 1930: 212).

These "wardens of bylaws" appear in 1273 in Chatteris and in 1289 in Newington. They were also referred to as "conservatores". Wardens were elected by village from the villein class. The practice undoubtedly started earlier but is not recorded in the local hallmote records. The wardens or conservatores were called guardians of the fields and were often leaders in the hundreds or tythings (groups of 10), (Ault, 1930: 224-5). Ault offers an interesting insight into the codification of such bylaws in each manor through the 13th century:

"It will be remembered that the by-laws we have been examining have been taken from the rolls of manor courts; and that most manor court rolls, especially the early ones, do not record by-laws. But if these by-laws, as has been argued, deal with the interests of the village community rather than with the relations between Lord and tenant, how is it that they should be found in the rolls of any manor courts? It seems probable, I think, that customs similar to those of Newington and Halton must have existed in all villages whose agricultural arrangements were similar. Such customs would be immemorial, chiefly enforceable by public opinion. An unruly neighbour who persistently flouted public opinion

might find that one or more of the neighbours whom he had wronged would take action against him in the manor court, conveniently at hand. The Lord of the manor court would be willing for a consideration to lend the authority of his court to the village custom. Early manor court rolls furnish much evidence of this sort of thing though the by-laws in question may never be recorded in the roll" (1930: 227).

The significance of custom in defining village law is also illustrated by the exception. Ault uncovered the case of Shrewton, Wiltshire in 1596-9 well after the period being studied.

"In that year the manor was dissolved. The Lord sold his holdings in the village, chiefly to the villagers themselves, and the manor court ceased to be held. Three years later life in the village had become so "irregular and disordered" that the freeholders tenants and commoners of the village assembled under the leadership of the vicar and set forth in a sort of code the old customary by-laws of the community, with appropriate penalties for breach of the same. The fines, instead of going to the Lord of the manor, as formerly, were to go to the poor of the town" (1930:229).

The significance of custom, the definition of custom by the community members, and their action in bringing disputes to the community court thus have roots in feudal England. The inhabitant was the expert and community definitions were fundamental.

All of this occurred under the Lord who enjoyed power from the Crown. The focus of activity was agricultural production and his wealth depended on the performance of his community, as did the survival of its inhabitants. The control of land also reflects a mixture of Crown right and community custom. The entitlement to land rested with the Lord. But land holdings were transmitted from generation to generation according to custom. Each transfer was confirmed by a ceremony before the Lord. The ceremony recounted the legal basis for the tenure and a pledge of loyalty from the tenant. The relationship was personal. As Ullmann summarizes:

"The loyalty was not institutionalized, but was intensely personal: it was the bond which kept Lord and vassal together and had reference exclusively to the Lord as an individual person. In contrast to the descending theme of governing, one is here presented with a definite individual-personal relationship, that kind of relationship which ... could not and did not exist in the descending form of government in which not the individual but the office constituted the essential ingredient" (1966: 65).

Loyalty also assumed the personal responsibility of the individual. In law enforcement, the Crown attempted to harness this lattice-work of personal ties by assessing fines or penalties against the "hundred" or community if the King's peace was broken, and the community failed to actively attempt to maintain "the King's" order.

On the manor, the Lord owned the land and had it worked by the villeins and cotters. Tenure for the peasants was secure through custom. The Lord could legally remove tenants from the land but to do so in an arbitrary sense would disrupt his community base and thus the source of his wealth. The freemen and Knights, on the other hand, had greater security of tenure, paying rent for their land. When by-laws were considered, freemen participated in the debates which usually occurred in conjunction with the hallmote. The tenant classes had to appear or were subject to fine payable to the Lord. The freeman and Knight were not subjected to the justice of the hallmote. They were tried by their peers in the royal courts. The freeman and the Knight represented "the hundreds" at the royal courts, acting as members of the jury and being asked to speak for officers in the community. They were also required to appear at the Sheriff's tourn, for the View of Frankpledge, along with the tenant classes. It was from these compulsory gatherings that the first members of parliament were elected. They formed the local constituency as did the independent town or borough. At similar meetings, near the end of the thirteenth century, some communities were given the power to elect their own sheriffs and constables. (See Beard, 1962: 28-29 and Harding, 1973: 80-85, for the roots of Parliament in these local courts).

"Law Enforcement" in the Thirteenth Century

Whether in the independent borough, or the village, crime control was a community responsibility. All males between 15 and 60 were required to maintain arms in good repair, and should a member of the village community, or of the watch in the town, raise the "hue and cry" they were responsible for joining in the chase. In towns, males were required to take their turn on the night watch. In rural areas, or villages, the person selected (often elected) to be in charge of the hundred, oversaw the response to community problems. Wardens were elected to enforce bylaws. In both cases incidents which had occurred were reported to the hallmote.

In towns which were independent of the local manors, the watch turned potential criminals over to the constable, or headle. The suspect, or stranger, was then taken before the local justice the next morning and either turned over to designated Knights pending referral to the travelling justices or released if a satisfactory account was provided.

Two constables were to be chosen from every hundred and town to check the status of each male's armaments twice a year. They

would then report to the King's justices as they made their next circuit on "defaults ... about armor, and of suits, and of watches, and of highways and also shall present all such as do lodge strangers .. for whom they will not answer" (Section 6, Statute of Winchester). The constable thus monitored those aspects of community life related to crime prevention or crucial services such as road and bridge repair or the state of community arms on behalf of the royal courts. The sheriff decided if a suspect should be held for the justices, and if so local Knights were designated to hold culprits until the next circuit as required.

The Statute of Winchester was passed in 1285, in part due to Edward's frustration over the efficiency of local law enforcement. Community self-policing worked on routine affairs, but murder, robbery and arson were different. Local communities might be intimidated, or might be reluctant to give up "one of their own" to the Crown. Edward's response was to order inquests by the Lord, or if necessary by a trusted member of his court, if such serious incidents occurred. If the local residents refused to present information, or the culprit, to the inquest, the King could fine the people of the community as a group. The penalty, once levied, would not be collected until the next Easter. The community's record in preserving the peace during the interim would be considered before the actual penalty was collected. Constables would collect the fine. The hallmote would allocate portions of the fine to the members of the manor. The mayor would oversee the allocations in a town.

Constables were thus appointed, or elected, in each hundred and in each town. They worked under the sheriff or mayor and reported on community crime prevention, defence, and crime control activities to the travelling justices. Their testimony thus became the basis for action by the Crown, or further inquests, if the travelling justices so decided.

In addition to these Crown constables, wardens enforced bylaws on the manor. Wardens were elected. They were answerable to their community at the hallmote and presented the names of persons guilty of breaking bylaws for community scrutiny. In towns which were granted independent charters by the Crown, the mayor, or elected head of the town government, oversaw bylaw creation and implementation. Members of the community were the monitors but constables were available to hold miscreants and to inspect community crime prevention efforts. In all cases, the sheriff decided if people should be held for itinerant justices or released. Bylaw enforcement fell to the local justice elected by the town to assist the mayor, or the Steward on the manor. Both used juries of presentment, or common understanding of custom as the basis for community action.

Conclusion

The thirteenth century provides a number of interesting insights, not only into the pre-history of our system of order

maintenance but also into the similarities of order maintenance structures. In chapter one the importance of bridging the gap between state and community was noted. Henry II was painfully aware of this. The inquest into the sheriffs' and the subsequent centralization of the system of justice under his control was the result. Excess profits taken by sheriffs, or local centres of power, generated grievances or alternate elites which threatened the Crown. Travelling justices acting in the name of the Crown centralized the system and generated royal income. They also created a significant dichotomy between order maintenance and the process for determining the guilt of individuals. The distinction was at the root of the specialization of justices into the common law, and the separation of the executive from the judicial powers. In the thirteenth century the distinction was not clear, the jury of presentment embodied custom. The constable reported on community compliance with the orders from the Crown or central edicts to preserve the peace. The sheriff still decided if persons should be forwarded for a trial, but no longer "heard" the case.

Custom was recognized as differing from community to community. Attempts to introduce reason into the definition of custom was rejected. This is a major contrast from the later system which saw custom and law as applying equally across the realm.

A second difference is in the acceptance of different tribunals for different classes in the society and different authorities for the resolution of disputes in the same community. With stable communities in the manors, custom set the pace and cadence of life whether it was planting, harvesting or feasting. Members of the community could be asked what community custom was. They also would be aware of events in their neighbourhood and of the reputation of their peers. They were used as a store of information at the hallmote and "hundreds". The presiding decision maker provided the focus of a ceremony which saw the individual face the community. As an interesting corollary, the hallmote through the offices of the reeve or other peers, was willing to encourage the informal resolution of disputes by sanctioning "peace days." At such times, disputing parties would be brought together under an elected officer of the community, often the reeve, and a contract would be thrashed out. The contract would define the basis for a settlement and a condition binding the parties to accept it. Once completed the contract was presented to the hallmote and became the basis for future community sanction should the agreement be violated.

The hallmote elected wardens. The village enacted bylaws, and the internal distribution of tax burdens. The sheriff and his constables oversaw the King's peace and its preservation by the community, while community leaders had to answer to the King's justices for the peace of their group of families. The existence of the sheriff and constable as representatives of the Crown, even though they were elected in some places, and the wardens as representatives of the manor does not seem to have posed problems.

They acted in separate universes within the same community. Since the purpose of their activity and the source of their authority differed there seems to have been little pressure to coordinate their activities.

This distinction in levels of authority, Lord of the manor versus Crown, was significant for the commoner. An appeal rested with the King from arbitrary levies of the Lord, while a political reaction by the Lords to extreme taxes by the Crown ensured checks and balances within the framework of power.

Community autonomy was a nuisance to the Crown, and a necessary gulf to preserve the customary world of the peasant. That custom became the commoners protection. When the gathering of representatives of all classes of society became more common in what we now know as Parliament, it is not surprising that they rejected orderly principles of justice as found in the Roman based civil law for the custom of the realm. As representatives of their hundreds, where custom ruled the substance of deliberations and determined what was a breach of community norms, the Crown was to honour custom, as were the Lords, in their relationships with their tenants. The hallmote and wardens reflected that tradition. The hundred did the same. The sheriff and constable bridged the gap between Crown and community. In so doing, they oversaw community performance in preserving the peace, and yet were bound by community definition of custom except in cases of murder, treason or arson, when deciding whether to hold individuals for the royal courts.

CHAPTER III: THE DAWN OF TIME - LAW AND THE STATE

"The political conflict groups that have figured in social-revolutionary struggles have not merely represented social interests and forces. Rather, they have formed as interest groups within and fought about the forms of state structures. The vanguard parties that have emerged during the radical phases of social revolutions have been uniquely responsible for building centralized armies and administrations without which revolutionary transformations could not have been consolidated. Social revolutions, moreover, have changed state structures as much or more as they have changed class relations, societal values and social institutions. And the effects of social revolutions upon the subsequent economic and socio-political development of the nations that they have transformed have been due not only to the changes in class structures, but also to the changes in state structures and functions that the revolutions accomplished" (Skocpol, 1979: 29).

The social revolution led by the forces of Parliament in seventeenth century England marks the dawning of the modern British state. Cromwell's victory ended the older system of law enforcement, replaced feudalism with a new approach to governing, and gave Parliament, and thence the law, greater status than the Crown. Change was rooted in society and reflected the strength of the commercial, now capitalist, and protestant sects. Private property, individualism and legal equality were ascribed the status of fundamental values. Feudalism with its emphasis on hierarchy, community and contract was ended. A new era had begun.

In studying modern policing our horizons extend back to this change. Our assumptions of the place of law, limits on power and the status of the individual are those of the post-Cromwell period. The forces of Parliament, as the vanguard in the revolutionary struggle did not foresee the magnitude of the changes they were unleashing. They ended an era. The new class of capitalists and protestants completed the process advocating reforms which would enshrine individualism, private property and freedom to compete in a relatively secure environment at the center of the political lexicon. The Glorious Revolution was their first success. The American Revolution followed. In both the values were the same, but their context yielded different structural and legal solutions. In the malleable structures of Britain their influence set the course for reforms up to the Twentieth Century.

In this chapter, three aspects of this history will be highlighted: the place of law in the changes of the 17th Century; the new centralization of affairs under the state; and, the evolution of approaches to the preservation of the peace.

The Place of Law in the Changes of the Seventeenth Century

The seventeenth century marks the emergence of the legal profession in England as the guardian of the traditions and constitutional autonomy of the English. Based at the superficial level in reaction to the new Scottish King's failure to follow the customary processes of English justice, the advocates of the "common law", led by Lord Edward Coke and his colleagues, championed Parliament as the voice of the nation and custom as the basic standard for defining legally acceptable behavior (Johnson, 1837).

During the 13th Century the Crown granted local Lords the power to control their manors and to exact levies on their tenants. The royal charter granted the right to position and power. It also limited the discretion of the Lord to the power granted by the Crown. Individuals could grieve to the Crown if a Lord abused those powers. Individuals also could complain if the customs of the community were violated in such a way as to harm their person or goods. Tenants, as we have seen, appealed to the hallmote on local matters, or the royal courts for violations of the King's Peace. Justices heard the latter cases.

Freemen and Knights had access to royal courts and a jury of their peers on all matters. The system of justice thus differed by class. Grievances were evaluated by reference to custom. Thus a complainant had peers confirm that the action leading to a complaint was a violation of accepted community behaviour, or custom. The defendant could present witnesses to say it was not a violation of custom. A jury of peers decided which it was, then the steward or justice levied an appropriate fine. The process continued. Custom also varied from place to place.

Diversity thus was quite acceptable. There were different levels of courts for different classes of subjects. Those courts relied on local custom and thus community decisions could vary from place to place. The royal charter defined the mandate of a Lord. But the substance of the charter and thus the latitude granted different Lords could vary. Appeal to the Crown was based on the wording of the specific charter in question.

Circuit justices kept records of their decisions and attempted to bring consistency to their decisions so that similar misdemeanours would result in similar verdicts. Such standardization was seen as equitable, but the definition of custom remained primarily with the community and its jury of presentment.

As the King sought more revenue the system of justice was centralized. Revenues then flowed to the Crown, instead of the local sheriff. With such centralizing reforms, it was appropriate to gather the people to discuss the need for change and/or more taxes. Since the members of the county were required to be present at the sheriff's tourntwice a year, that court provided the forum from which representatives were selected to attend these central "Parliaments". Boroughs also selected representatives.

By early constitutional agreement, such as the Magna Charta, the Crown could only levy taxes once they were approved by these Parliaments. The custom developed early that these gatherings, like the local courts, offered representatives from communities the chance to present local grievances for redress. The Crown was expected to respond by defining remedies for problems which could subsequently be enforced by his justices. Applications for royal writs provided for the legal implementation of the remedy.

From time to time the demands placed on the state required increased tax revenues. The cost of foreign wars was one illustration. Economic crises as commerce became more significant could be another. Some authors have argued that such problems, and the Crown's incapacity to raise more revenue through rents on landed gentry provided the cause for the Cromwell Revolution (see Goldstone, 1983).

The crisis coincided with the assumption of the English throne by the Stuarts. Coming from Scotland, the new King had been trained in a civil code system, or one where law was based in principles and reason. Legal training was closely linked to logic. An educated person, aware of "the principles of justice" could thus reach a correct decision in a case.

Such a system conflicted with the English tradition of having community members present grievances and then have their peers decide their legitimacy by reflecting on the past practice of their community. Parliament followed this "common" practice. Leaders in parliament often acted as local justices or justices on higher courts. Lord Edward Coke was a member of this element in the elite. He accepted the status of the Crown but defended the common law tradition of the realm (Johnson, 1837: VI c5). The confrontation between King and common law is illustrated in the following passage written by Coke in 1610 in reaction to the King's threat to use his prerogative to make law, thus bypassing Parliament.

"... every precedent hath a commencement, but where authority and precedent are wanting; there is need of great consideration before anything of novelty is established, and to provide that this be not against the law of the land; for, I said, the King cannot change any part of the common law, nor create any offence by his proclamation, which was not an offence before, without Parliament ..." (Johnson, 1837: 225).

Then in 1620 Coke led a move in the House of Commons which delayed debate on the King's request for more tax revenue until the Crown had redressed the grievances of the people. Coke argued in part as follows on 5 February, 1620.

"The privileges of the house concern the whole kingdom ... But let us take heed that we lost not our liberties, by petitioning for liberty to treat of grievances, etc.

No proclamation can be of force against an act of parliament.

"In Edward the Third's time a parliament was held every year, that the people might complain of grievances. If a proclamation is issued contrary to law, the law is to be obeyed, and not the proclamation.

"In the fourth of Henry the Eighth, Strowde moved against the Stannary Court, but was fined after the parliament ... Thereupon, a law ensued for freedom of speech in this house; but it ought to be done in due and orderly manner.

"My motion is, that the grievances may be set down, ... first. The King's ordinary charge and expenses much about are [second]; the extraordinary ever borne by the subject; therefore the King can be no beggar ...

"Lastly, I move for a committee of the whole house for grievances, the remedying these will encourage the house, and enable them to increase the supply to his Majesty." (Johnson, 1837: 102-103).

Coke's motion passed. Grievances were to be presented to the Crown for redress before the King received permission to raise taxes. Stalemate ensued and Parliament was eventually dissolved only to be recalled when the King had used up the potential of his other sources of revenue.

James I was having trouble with the established courts of the realm at the same time. In 1607 while Coke was Chief Justice of Common Pleas, Coke argued that courts reached decisions by following precedents set in the common law not by the application of principle. So, although the King was learned, since he was not trained in the procedural requirements of the Common Law, he could not participate in court. Then in 1627, the court extended the independence of the Common Law by stating that it had the power to review proclamations issued by the Crown to ensure they did not conflict with the law of Parliament. (The Case of Five Knights, 1627).

The stories illustrate the importance of the King's lack of revenue. He had to deal with Parliament. On the other hand, his needs provided Coke and his colleagues with the opportunity to assert the rights of Parliament and the independence of the common law. In the subsequent stalemate, the revolution occurred. With the victory of Cromwell and the forces of Parliament, the law became supreme and the legal profession the master of the common law. The change reflected a fundamental shift in power to the increasingly institutionalized "Parliament".

Throughout, Coke was a conservative champion of the common law as illustrated by the following assertion:

"For any fundamental point of the ancient common laws, and customs of the realm, it is a maxim in policy and a trial by experience, that the alteration of any of them is most dangerous for that which hath been refined and perfected by all the wisest men in former succession of ages, and proved, and approved by continual experience, to be good and profitable for the Commonwealth, cannot without great hazard and danger be altered and changed" (Johnson, Vol. 2, 1837: 414).

Coke thus was a defender of traditional English practice and reacted to the innovative use of power by James as the King attempted to respond to problems of state as he perceived them. The victory of Parliament entrenched that reaction and in rejecting the initiatives of the Crown defined them as unconstitutional. The door was left open for Parliament to seize the initiative. The Crown had been the centre of the feudal network. Cromwell moved in to fill the void.

As he did, Parliament was supreme. The statute defined the will of the state. In accordance with traditions of redressing grievances, it also bound the state. The prerogative of the Crown was hard to extinguish but its long term status as subordinate to law was ordained. The judiciary, although not yet enjoying independent tenure (this did not happen until an act was passed granting independent tenure during the first year of the reign of George III), had achieved the right to interpret the common law in accordance with custom, as recorded by circuit justices of the royal courts, and the actions of Parliament. The state thus rested in law and the judges were its priests. Parliament had the potential to rule and as it assumed a broader mandate the modern state emerged in its full glory.

The battle between the advocates of Parliamentary government and the supporters of the Crown was of relevance to policing since it was a battle over the status of law. Did the Crown rule by charter, limited by custom, precedent and constitutional contract; or did Parliament, as the representative of the nation, rule through statute? In the latter case, law applied equally to all. Diversity was a reflection of privilege or discrimination. Early tension over community autonomy and the sheriff exceeding his perceived mandate to increase the spoils of office were a mild foretaste of the prescription defined by the revolution. That prescription reflected the values of an ascendant portion of the community concerned with commerce, international trade, private property and the capacity of the individual to gain and hold personal wealth. The Parliament would rule by law. All would be equal under the law. The power of the state would be defined by the law and the people would have a say in the drafting of the law. These standards were to be explicitly realized a century after Cromwell with the American revolution and the drafting of an American constitution.

Centralization

As the common law was confirmed as the law of the land and Parliament as the voice of the nation, changes were occurring within the structure of the state. These changes transformed the basis of governing, shifting the focus of attention from the local community to the individual. Early hints of this change are found in the relative equality of inhabitants of independent boroughs or ports in contrast to the social ranks of the village. As commerce and international trade became more significant the number of people employed off the land grew, making the manorial system of production and of social solidarity less universal. At the same time, plague, population changes, new technology, and new markets made new types of farming more efficient. Economic demands imposed by the Crown in the sixteenth and seventeenth centuries increased the tax burden shouldered by local Lords of the Manors and independent boroughs (Goldstein, 1983). In some places this led to enclosures; in others, as we saw in Chapter 2, to the gradual shifting of power to members of the community itself, in return for compensation of course.

Cromwell's revolution marks a pivotal point in the evolution of the "Crown Charter" system. As the cost of government grew, the Crown could raise revenue through rents attached to charters. These could be paid by companies exploiting the resources of the British Empire such as the Hudson Bay Company, by the Lord given an estate or by the mayor and leaders of a borough. The royal charter, which was basic to the definition of power and rights in the thirteenth century, thus was adapted to commercial enterprises by the seventeenth century.

When the Stuarts assumed the throne they reviewed these myriad charters, and attempted to standardize those of the independent boroughs. The renewal of the charters also offered a chance to negotiate rents and the terms of the agreement. The resultant revenue was especially important as the tensions between the Crown and Parliament grew. Charter revenue, and the creation of new charters, extended the revenue of the Crown as Parliament delayed the authority to raise revenue through taxation.

Needless to say, when the forces of Parliament seized control the system of royal charters became an immediate target. If Parliament was to rule it had to control the income available to the Crown. The charter was not easy to abolish, however, since it provided the link between the state and the local community. Unlike today, there was no legislative context for such relations. The charter thus remained but it was reviewed by Parliament. With the ascendancy of Parliament, however, it lost the significance it had had. No longer did the Crown delegate the power to govern through charters. Now the Parliament was supreme and could review executive action. The politics of state assumed a new focus, the control of the selection of members of Parliament. If the Crown, or its supports, could control a majority in Parliament, the Crown would be ascendant. If Parliament

represented persons of a more republican cast, the power of the Crown would be subordinated to the leaders of the Houses of Parliament.

The membership of the House of Lords had a direct interest in the charters since their personal revenue rested on their tenants. The members of the House of Commons representing cities or boroughs shared an interest in the powers and tax burden to be assumed by their corporations. Members of Parliament selected at the sheriff's tourn, on the other hand, spoke for the traditional rights of members of their village(s).

The significance of "charter politics" was greatest between 1629 and 1640 when the Stuarts were attempting to rule without Parliament. J.H. Sacret in his authoritative article "The Restoration Government and Municipal Corporations"

"Charters became much more systematized in the Stuart epoch; the status and functions of municipal officials are much more clearly defined; and new privileges, perchance in some cases already being exercised in fact, are recognized and regularized, at a price. But when as in the well-known case of the Huntingdon Charter of 1630, apparently typical of many others, the governing body, heretofore elected annually by the citizens, became an oligarchy holding [office] for life and nominated in the first place by the Crown, the conclusion is irresistible that the Crown deserved not only to strengthen its hold on the government of the towns themselves, but had in contemplation also the prospect (albeit doomed to disappointment) of recurring docile parliaments for the future" (1930: 236).

After Parliament seized control Cromwell remodelled the charters and members favouring Parliament were put in control of local corporations (Sacret, 1930: 236). The battle for control of the borough and city was in part a battle for the control of Parliament. The county selection was less disputed since the ascendant Justices and Freemen were predominantly royalist. Then, predictably, when Cromwell seized power, these persons were replaced. As the court system crumbled the army was used to maintain order and to ensure "appropriate" local officials were selected.

In both the battle for the charter and the control of the countryside, the state assumed new significance. Parliament reviewed the charters. In March, 1677 it voted to confirm the use of charters but to deny the Crown the power to determine how a town would select its representatives to Westminster. The use of the military to preserve the peace between 1655 and 1657, on the other hand, eclipsed local feudal methods of social regulation and dispute resolution. The conflict for the state and the rise of Parliament centralized power at Westminster. The continued battle between whigs (advocates of popular democracy) and tories (royalists and advocates of feudal contractual forms of social organiza-

tion) for the control of Parliament yielded the structures of the modern state.

The evolution of that struggle offers a significant lesson to any student of the role of the police in society. Under the feudal system Parliament reflected the composition of the English nation, Crown, nobles and commoners all were involved in the promulgation of a statute. The commoners were representatives of the communities of the realm and spoke for the customs and to the grievances of their community just as villagers had before local courts as a jury of presentment. The commoners thus reflected and spoke for the mosaic which was the England of local communities. The link between the local community and the state remained the feudal charter.

With the standardization of borough charters under the Stuarts, and the struggle for control of the selection of representatives, the local population was politically separated from the local governors. The definition of power and the local elite by the central government affected all communities as power at the level of state shifted from Crown to Council to Crown. At the end, Parliament had assumed an auditing and supervisory role in the definition of the substance of charters.

The significance of Parliament and continuing tension between whigs and Tories produced significant debate over an appropriate way of selecting representatives to the House of Commons. Representation by community meant that villages in a county where few people lived enjoyed the same representation as those in a large independent borough. With the growth of manufacturing centres in the eighteenth century, these new cities received a similar quota as if they had been boroughs. The Whig argued this was inequitable. Persons involved in commerce or manufacturing were underrepresented when compared to those involved in farming or renting their land. The essence of democracy became representation by population. This call of course did not mean everyone but it did mean more significant representatives of the rising middle class at the expense of the landed gentry. The logic at the base of the Whig position was that each individual should have an equal say in selecting a representative or each representative should speak for approximately the same number of constituents. By 1832 the Whig position had won. Buoyed by the American and French revolutionary credos, yet tempered by the excesses of the post-revolutionary French experience, Britain accepted the principle of representing individuals in the House of Commons. That approach complemented the legalistic bias of parliamentary supremacy to end the diversity and personal responsibility and obligation of feudalism. The House of Commons responded to individuals, the House of Lords for the nobility and their corporate responsibility. The Common Law rested on custom, but custom was found in judicial precedent not community review and the jury of presentment. Parliament now spoke for the state, but policy had to be approved by representatives of the people in the House of

Commons. Community diversity had become subordinate to majority rule.

The Modern State

The assumptions which now are shared as the basis of the liberal democratic state can be briefly defined as follows:

- 1) the state is sovereign and acts through the law, thus the statute passed by Parliament is the ultimate law in the land;
- 2) the people rule through their representatives in the House of Commons who are elected to represent their constituents (although community is recognized each member is elected to represent roughly a similar number of voters);
- 3) the law is applied equally to all individuals and the power of state officials is limited to that defined by law, if their actions have an impact on the rights or property of individuals;
- 4) individuals have access to the courts if they believe their legal or customary rights have been infringed;
- 5) municipalities and corporations may make by-laws or regulate their own internal affairs in those matters delegated to them by statute.

The modern state created a hierarchical structure of government paralleling the formal structure of law. If Parliament was supreme, then local communities had their power to make law dependent on state authority. In a similar way, if Parliament was supreme members of the executive branch of government had their power defined by law. Since people changed but law defined the authority of persons acting on behalf of the state it was a simple step to define the power of an office in law and then let the occupant exercise that power as long as he or she held the office. The law thus institutionalized and standardized government. Similar tendencies can be found in the early seventeenth century under the renewal of charters but, when one studies the modern state, fundamental assumptions differ. The Stuarts were concerned with administration. Students of the modern state are concerned with the exercise and control of power over individual citizens. That change, when combined with the institutionalization implicit in allocating power to the office rather than its holder, colours our perception of the maintenance of order and the preservation of the peace.

The Preamble to Modern Policing

The dawn of the modern English state coincided with a civil war. A divided nation and the preservation of the peace are a

contradiction in terms at best. The traditional system of circuit justices, county justices of the peace, high constables and petty constables (the former in the borough or hundred the latter at the watch or tything) continued under the Stuarts. With fees going to the judicial officers or Crown directly the attractiveness of these local positions had waned (Lee, 1971: 107-123). To make matters worse, the loyalty of circuit justices and many justices of the peace to the Crown, which appointed them, meant that the system fell into disarray with Cromwell's victory. In boroughs and towns the matter was exacerbated by tampering with local charters. The appointment of a politically acceptable local governing body to control Parliament enforced partisan stereotypes and undermined the legitimacy of the local officials. Since they often acted as justices, especially with respect to the maintenance of order, these events left England with an ineffective police system.

Cromwell responded first by attempting to create a new system of local justices under a new commission of the peace. His efforts failed and in 1655 he divided England and Wales into twelve police districts, each commanded by a senior military officer. A force of 6420 (Lee, 1971: 127) was deployed under them to preserve the peace, to enforce the morale precepts of the new government and to control royalist sympathizers. The force was short lived, harsh and seems to have been effective in reducing crime. The cost in personal liberty was unacceptable however, and the force was disbanded in 1657.

The maintenance of order then reverted to local justices of the peace and the system of community policing defined originally in the Statute of Winchester of 1285. Boroughs were required to maintain a watch. All male residents between 15 and 60 were required to serve. Strangers were arrested only to be released once they had given reason for being in the community. The constable arrested the stranger, presented him to the local justice and ensured that citizens maintained their weapons in good repair in anticipation of participation in "the hue and cry", should a suspect flee the watch.

In rural areas the family groupings remained the basic policing unit. A High Constable was appointed by the justices to oversee the hundred and petty constables were selected for each grouping of ten families. These constables were members of the community. They received little remuneration and spent most of their time at their own jobs. Gradually the jurisdiction of the High Constable became equated with the county.

In an urbanizing society, increasingly concerned with commerce and manufacturing, the old police system did not work. The community was primarily responsible for maintaining the peace but it had lost its substance. Political divisions, a new emphasis on individualism, greater mobility and gangs of outlaws had all taken their toll. Untrained citizen conscripts were ineffective in the new individualistic environment of the entrepreneur and the

criminal. As Melville Lee (1971) notes in his excellent review of police history in England, reforms of the traditional policing system were ineffective until the modern state had had time to establish itself.

The Potential of the Modern State

The intellectual origins of the modern state are found in late sixteenth century writers of Europe who were concerned with the chronic religious wars racking the population. Much like Northern Ireland today, religious feuding is hard to mediate. Their solution was the creation of an organization with the "humanly unlimited power to preserve the peace" over a specific geographic territory. In constructing the theoretical basis for the state they had to make assumptions about the nature of humanity since religion could not justify the state for obvious reasons. These writers used reason to construct an argument to support the existence of a state with the power to regulate the affairs of its citizens. Their definition of the nature of humanity and reason offered reformers a new vantage point from which to address social issues.

By the late eighteenth century the modern state had taken root in England. Details of democracy had yet to be worked out but Parliament had consolidated its position in relation to the Crown. The state was ruled basically by law and the individual, as an autonomous being, was accepted as a focus for public policy and political rhetoric.

Three generations of reformers between the 1750's and the 1840's laid the foundations for modern approaches to the maintenance of order and the preservation of the peace, including modern policing. The assumption that rules of human behavior existed which could be discovered by reason and experience was basic to their approach. Once these rules were discovered a system of regulations which carefully defined punishments, rewards, security and opportunities for individuals would provide the framework for a peaceful society.

Jeremy Bentham was the most prodigious writer in the area of police and penal reform. His view of human nature acknowledged the significance of pleasure and pain, reward and punishment in steering the behavior of individuals. In 1775 his "Rationale of Punishments and Rewards" analyzed the topic of social order and regulation. The result was a package of reform proposals covering the criminal law, the penal system, the Poor Laws, and public health. His work tended to open the possibility of addressing the chronic problems of preserving the peace in England, and probably more important, a discussion of why and how order should be maintained. When such fundamental questions were finally asked, the potential for the reform of the ancient watch system became apparent. A number of individuals with experience in the problems of law enforcement, also tinged with the reformist brush, were the first to propose solutions. Modern policing had its origins in

the ideas of both the grand reformers and these practitioners of the late eighteenth and early nineteenth Centuries.

Although the challenge of preserving the peace was not being met in either rural or urban England, the problems of London were of most concern to the government. In 1736 Parliament passed a statute authorizing the mayor and alderman of the city to hire constables and pay them from a special tax levy. Magistrates in the parishes surrounding the city were also immersed in the problems of the city. Criminals, or gangs of thugs; roamed the metropolis. Two of the most famous of these magistrates were Henry, and his half brother John, Fielding. They observed the patterns of criminals in their parish and introduced significant reforms to ease the apprehension of these mobile individuals. Their work was rooted in observation and then prescription as illustrated by the titles of two pamphlets they published in 1749 and 1755. The first, by Henry, was called "An Inquiry into the Cause of the late Increase of Robbers." The second, by John, was "A Plan for Preventing Robberies within Twenty Miles of London." The brothers employed detectives to apprehend criminals and organized a salaried constabulary into eighteen patrols, thirteen to patrol the highways around the Metropolis and five the streets in the central district of their Bow Street parish. (Lee, 1971: 156. For details see Armitage, 1932).

Crime and corruption continued in the Metropolis, but the Bow Street reformers had an impact which focused public attention on the parish court. Its success was not emulated despite repeated Parliamentary inquiries in the 1760's and 1770's which concluded that the watch system was inadequate. Then in 1780 the Gordon Riots provoked the government to introduce a plan to create a centralized para-military force for the London and Metropolitan areas. It failed under the combined opposition of the city of London and the local justices of the peace; the police authorities of the day. The memory of the harsh military policing under Cromwell was harnessed to support their cause in Parliament. The British seemed to prefer disorder, or personal protection to a deployed military presence in their country. The government initiative of 1785 although abortive, was not totally lost. In 1786 it served as the model for the Dublin police force which later was extended to become the Royal Irish Constabulary (Allen, 1953: 106-107).

Reforms began in the 1790's, by the time Bentham's works on penal reform had been published. Fielding's efforts to harness the support of wealthy Londoners to crime detection and apprehension by creating local societies which would help pay for improved police services, had drawn public acclaim and the public was demanding further action. The government responded in 1792 by reorganizing the London magistracy. Twenty one magistrates were appointed with metropolitan wide jurisdiction to work in one of seven district police offices. Each office had six constables to support its operation. All were salaried. The system was modeled on Bow Street Parish but it lacked the inspiration of its model.

The problem of crime remained but at the political level, the reformers through this action removed one source of opposition to the 1785 bill, the parish magistrates or justices.

The protection of merchants' property on the docks was almost impossible in this period of social unrest. In 1798 some West India merchants paid an advocate of police reform, Patrick Colquhoun, to create a Marine Police. In the tradition of other reformers of the time, Colquhoun had analyzed crime in London and had published the results in his "Treatise on the Police of the Metropolis" of 1796. His organizational talents were then devoted to the Marine Police. Again a salaried, deployed constabulary improved public order or the security of private property. Despite these successes, popular concern over the terror of post-revolutionary France and the exploits of Napoleon's secret police made it hard for government to proceed with the extensive police reforms which from our eyes seem so obvious.

The Decade of Reform

The impact of the reformers was felt in the 1830's. Sir John Hobhouse and Richard Oastler advocated limits on the factory exploitation of children. The Poor Laws were reformed to encourage people to work. Assuming that individuals would avoid pain if they could a Royal Commission appointed to inquire into the operation of the poor laws established the following principle: "to let the labourer find that [the] parish is the hardest taskmaster and paymaster he can find and thus induce him to make application to the parish his last and not his first resource" (Finlayson, 1970: 55-57). The laissez-faire era was launched. Its full impact was felt in the 1840's but in the economic sector the "free enterprise" ethos where individuals reaped the rewards or carried the burden of the private economy had eclipsed the community and personal bias of feudalism.

The state, however, did have a role in controlling excesses whether it was child exploitation or individual destitution. The administration of poor laws would be the responsibility of a central board of three commissioners to ensure relief was provided on country-wide standards (Finlayson, 1970: 57). This board also would monitor the provision of relief and make proposals to the government for reform at the time of its annual report. Centralization, analysis and reform based on experience characterized these innovations and others in the social policy sector. Minimum standards for prisons, school facilities and railway services followed this model.

The problem of order maintenance was also subject to the reformers' analysis. The penal code was reviewed. The reason for many crimes was challenged, as was the severity of sentences. "Colquhoun estimated that there were 160 different offences which were punishable by death" (Lee, 1971: 209). In 1810, Sir Samuel Romilly argued in the House of Commons, "if it were possible that punishment, as a consequence of guilt, could be reduced to an

absolute certainty, a very slight penalty would be sufficient to prevent almost every species of crime ..." (Lee, 1971: 205). He advocated improved police services and a reevaluation of the severity of sentences. Others differed. A committee of the House of Commons concluded in 1818 that "the police of a free country was to be found in rational and human laws - in an effective and enlightened magistracy ... above all, in the moral habits and opinions of the people" (Allen, 1953: 103). By 1829 a package of reform proposals was ready for Parliament. Following the recommendations of yet another Royal Commission, which concluded that "it was absolutely necessary to derive some means to give greater security to persons and property," (Lee, 1971: 230) Peel presented his plans for policing London and its Metropolitan area. The police would be controlled by two Justices of the Peace appointed by the central government. At the same time the penal code was amended to reduce the penalties for many offences. The reformers were moving on a broad front. These steps provided the basis for extending the experiment in policing across England as the London police evolved to meet the problems of the metropolis. Their birth was not easy. The City of London had to be excluded from the jurisdiction of the force. Reformers of 1792 had undercut early opposition from parish magistrates but the City jealously guarded its police power. Politically that demand had to be acknowledged for the bill to pass.

The New Police and the Modern State

The creation of the Metropolitan Police Force was followed by extensive legislative reform designed to standardize the status and powers of the police across the country. The major bills were The Special Constable's Act of 1831 and the Municipal Corporations Act of 1835. The former defined the status of special constables and authorized two or more Justices of the Peace to appoint them in cases of emergency. The Municipal Corporations Act superceded the ancient charters of corporations, defined the powers of Municipal officers and created a Watch Committee in each municipality to appoint and manage a local police force (Lee, 1971: 274-275).

The reforms of the 1830's thus introduced a form of centralized social policy possible only when the individual was seen as a common entity across the country. That assumption, once the basic rationalization for the state, had now become the basic world-view on which reform proposals focused. The modern state had finally emerged in its splendor. The police were one aspect. They were to emphasize the preservation of the peace and the protection of individuals and their property. With such security, the penal code could be adjusted to ensure it was to the advantage of each individual to conform to the will of society as expressed in the regulations of the state. The state ruled through law - but indirectly. Parliament remained supreme. The House of Commons represented competent, autonomous individuals and thus spoke for all citizens through a majority vote. The law was drafted to provide a system of rewards and sanctions. As a result, the rational

individual, although free, would conform to the will of the majority if they wished to maximize their position.

The law was supreme. The Municipal Corporations Act completed its eclipse of the feudal charter. Watch Committees appointed and managed municipal police. The state would inspect their adequacy. In a similar way, the reforms of the 1830's provided for state supervision or inspection of conditions of work, welfare and sanitation. The reformers had set the foundation for the functional evolution of our services. The police were one of those services.

The mandate of the modern police must be studied in the context of the reform movement. The crisis of preserving the peace and protecting property had been chronic for a century. But, the prior assumptions of rationality, shared humanity, individualism and progress all set the foundation for the reform package. Penal reform, police reform, welfare reform, and the emphasis on a laissez-faire economy all coincided. The principles of law, the paramountcy of Parliament, and reaction to the harsh authoritarian experiences of post-revolutionary France, and rhetorically, Cromwell's England all set a limit on public tolerance of the new police. It is in this context that the modern police were created, first in Dublin and then in Metropolitan London. As a highly visible agency, the character of policing evolved to reflect its political context. A review of the place of the police in England, Canada and the United States offers insight into the place of the police in the affairs of the state and society today.



CHAPTER IV: POLICE IN THE MODERN ERA

Primary Objective of Police - The primary object of an efficient police is the prevention of crime; the next that of detection and punishment of offenders if crime is committed. To these ends all the efforts of police must be directed. The protection of life and property, the preservation of public tranquility, the absence of crime, will alone prove whether those efforts have been successful, and whether the objects for which the police were appointed have been attained.
(Metropolitan Police Instruction Book)

The new police were one aspect of wide ranging reforms in the delivery of government services in the second quarter of the nineteenth century. The entire package was significant and reflected a new way of analyzing the relationship between government and society in England. The whig faction was securely ascendant in an ideological sense. Individuals were significant, essentially similar, and rational. Thus, once rules of human behavior could be discovered, the state could guide the behavior of individuals to reflect the common interest. Laissez-faire economics made this all the simpler, since individual self-interest would be rewarded in the market place. If the market was free and demand for goods reflected the needs of other individuals in society, profit would be maximized for each by responding to demands of others. The state was to provide the context for the free market. It would ensure the destitute were "looked after". Limits would be placed on the exploitation of children. Individuals would compete for resources in an environment of personal security and with their property protected.

The dream of the laissez-faire state was also the dream of personal wealth. It marked an era of public sector reform and expansion. Reform based on logic and experience launched new administrative centralization. Prisons were administered locally but inspected nationally. Support for the poor, meaning destitute, was centralized (Finlayson, 1970: 56-58). The reforms thus extended the size of government and the range of its control of social services. These agencies were functionally oriented and a new administrative language complemented their introduction. The reformers, committed to the new laissez-faire mentality, defined objectives for public agencies which reflected their mandate in the new social system. With the broad design of the modern state secure, the agencies were then placed in the setting of the new legal structure. The study of modern policing thus rests not so much on the history of social control as on the vision of reformers who defined its purpose in the context of their laissez-faire assumptions and the modern state. The dawn of time for policing thus coincides with their horizons.

Policing has evolved to reflect its political and social environment since its introduction in the states dominated by

British traditions in the early nineteenth century. The rational model and organizational approach of the reformers remains however. For example, modern writers such as John Alderson or Robert Reiner, who are among the most innovative in the field and yet have very different perspectives on policing, use a logical and analytic approach to defining an appropriate place for the police in the context of modern government and society. In so doing the early objectives of policing are invoked to assess the police service much as the assumptions of individualism and laissez-faire economics permeated the prescriptions of early reformers. That orientation perpetuates the original mandate of the police and permits it to evolve consistently in response to the political and social context in which it operates. It also precludes many substantial questions from being asked.

In this chapter, some comparative insights into the significance of politics and community expectations can be gained through a brief glance at the evolution of policing in the United Kingdom, the United States and Canada. All three share a common heritage. The diversity of policing within the federal structures of the United States and Canada necessitates a superficial glance at the former, focusing on New York City, and a concentration on Ontario in the latter case.

The Original Police Mandate

The Metropolitan Police was not a new idea in 1829. Paid constables had been employed in London for almost a century. Highly organized police services operated in Europe. What was new, was the design of a police service to prevent crime and protect persons and property without challenging the laissez-faire values espoused by reformers. Freedom had to be preserved. The police service was ancillary to the fundamental arena of economic competition. The objective of the police was to preserve the peace. But, they were not to interfere with the "real business" of business. They were not the protectors of a ruling elite which controlled the state; their mandate was ideologically rooted.

Sir Robert Peel appointed a Commission to study policing in the Metropolis in 1828. He acted shortly after the report was released by proposing a staged introduction of trained policemen into parishes around the City of London. "An Act for Improving the Police in and near the Metropolis" (10 George IV, c 44) emerged from Parliament in June, 1829. The plan to centralize the police under a former military officer, Colonel Rowan, and a lawyer, Richard Mayne, was attacked by critics of the police reform as an attempt by Peel to seize power. Comparisons were made with the totalitarian police of contemporary Paris (Lee, 1971: 246-247).

In creating the police, Rowan and Mayne defined "the police as agents of the legal system who derived both their strength and their restraint from the powers and limitations of the laws of England" (Miller, 1977: 15). The statute creating the force

offered few exceptional powers to the "new police". Outside of the power to arrest suspected miscreants, the powers of the police were similar to those of the ordinary citizen. The citizen policeman, or as Charles Reith calls them "Kin-police" (Allen, 1953: 118-120), provided the unique quality of the British service. The limited powers of the police became a significant basis for contrasting their power with their European counterparts. The British police were citizen servants of the law. They were limited to the execution of the law, but were relatively free, and in fact encouraged, to interact with the public they served. Edwin Chadwick, a major architect of the new police concept, "argued that the police should seek public support by appearing more frequently in a service role - helping to prevent and assist at accidents, protecting public health, and other beneficial functions which maintained order without the application of force" (Miller, 1977: 107).

The exercise of power by the police was limited to that authorized by law. The Commissioners assumed a cautious stand even in the face of politicians, refusing to authorize the police to act even when requested unless their legal mandate was clear. At the personal level, a constable could not engage in politics. He was denied the right to vote until 1887 in national, and 1893 in local elections and was expected to remain impartial in political debate. In a similar way, the recruitment and deployment of constables was designed to ensure the constable did not live in the area where he worked.

The legal role of the police complemented the reforms of the penal system and subsequent amendments to the police act which broadened the police mandate. By 1853 Frederic Hill, following in the tradition of social analysis of the early reformers, assessed the record of the Metropolitan police as follows in his book Crime: Its Amount, Causes and Remedies,

Few will now deny that the power of the police has been rightly exercised, and that instead of restraining the liberty of the good part of the community, it has extended it, by freeing them in a measure from the molestation of the bad; and no one now thinks of pointing to the police as infringers of the liberty of the peaceful and honest, for the more the liberty of the turbulent and dishonest is restricted the better; the freedom of the malefactor being the bondage of the just, (cited in Miller, 1977: 109).

The comment seems to have confirmed that the police filled the mandate of the service envisaged by the reformers. The police, however, were but one agency in a range of public initiatives. With power set by the law and acting to preserve the peace in the community, other commentators noted a less flattering picture. The bias is shown in Rowan's correspondence where "the respectable citizen" remains the focus of his concern. If the law favoured the rich, or if there was a bias toward the poor in police-society

contact these were not recognized in Hill's systemic assessment. They were apparent, however, among other social critics. Frederick Engels, for example, wrote:

A policeman will always treat a member of the middle classes with every courtesy whatever he may do ... But a worker who falls into the hands of the police is immediately treated in a nasty and brutal fashion. The fact that a worker is poor is sufficient for him to be suspected of every crime in the calendar (Frederich Engels, *The Condition of the Working Class in England*, 1845, W.O. Henderson (trans.), cited in Miller, 1977: 123).

The legalistic test of equality of treatment, if the police were to be impartial, was being raised with significant impact.

The questions of the bias of the law, the purpose of the social service system, and the resultant impact on different segments of society in a capitalist, free enterprise society were truly launched by the 1860's. Those questions reflected a significant change in the vision of society which extended the individualist assumptions of the whigs adding the worth and basic equality of individuals in non-economic terms to earlier autonomist demands. The police, as defined in their original mandate, were to preserve the peace in a period of insecurity. With some success the question of whose security begged adaptation in the definition of their earlier mandate. But, the police did not work in isolation. Was the law itself a tool of the economic elite? If yes, the police as an impartial public service under the law were destined to be partisan. Were the police to be loyal to the state and all individuals in society? If so, the criticism of working class protagonists necessitated reform. But in this latter case the police as impartial were a potential limit on the discretion of the wealthy. These contradictions in role became especially apparent in the 1840's and 1860's and they still provide significant themes in the evaluation of policing today. In both cases, the position of "Kin-police" places the debate within the region of the police service. As a potentially free standing, functional public agency which is comprised of a constabulary with original statutory jurisdiction, a "Kin-police" has greater capacity to define its relationship to society than a "ruler-appointed" police. It is from this basis that the relative experience of policing in the United States, Canada and the United Kingdom may offer insights into the potential of the police in state-society relations.

The United States

The early system for the administration of justice in the United States was transplanted from Britain. It had two major variations. In Virginia, the justice system reflected the centralized presence of the justice of the peace working in General Quarter Sessions. The constable and sheriff as local officials

were elected annually, or conscripted if necessary, at the spring meeting of the justices. In the New England States the local community played a larger role. Electing its officers annually, including local judges, constables and sheriffs. The case of Virginia offers some insights into differences within the traditional system of the administration of justice which help place the constabulary in an American context.

Early settlement in Virginia was under a royal charter to the Virginia Company (1609). These charters gave the Company the power to provide a government for the colony, including the right to administer justice. Such companies reported to the Board of Trade in Britain. The Board then referred matters requiring a legal response from the British Government to the Attorney-General. The Governor and Council were appointees of the Company, which was closely linked to the Crown through the charter. The Assembly represented the freemen of the colony. It legislated on local affairs, raised taxes and represented the interests of the colonists to the Governor.

Quarterly courts were held until the Cromwell era. Justices appointed throughout the colony resided at these courts. Any justices who could not attend, and who were not excused, were fined. The justices reported on affairs in their section of the colony, oversaw the appointment of local officials including petty constables and sheriffs, audited the books of sheriffs, reviewed land cases, and heard serious criminal and civil cases. The constable was the servant of the court. Constables appointed by the General Sessions acted as its emissaries reporting on the status of local services or executing judicial writs (Rankin, 1965: 9-12).

When Cromwell came to power, county courts assumed increased responsibilities at the expense of the General Quarterly Court. In 1656 the Assembly of Virginia deviated from the British homeland, by retaining the General Court, when Cromwell introduced military rule. The traditional system of justice thus remained in place in the colony under the charter of the Virginia Company. In 1662 the General Quarter Sessions was renamed the General Court and the dates for its sessions were adjusted to reflect the pattern of life in the colony.

Governors were chief players in the General Court; presiding, interpreting the law and participating in the decision. The court interpreted the colonial law, used juries to define customary practice, and invoked english constitutional precedents. Some governors gave greater weight to colonial law than others. In 1692, Governor E. Andros, for example, accentuated British statutes at the expense of colonial legislation. His predecessor, F. Nicholson, had adhered to the law of the colony. The inconsistency led to criticism as illustrated by the following comment in 1698:

It is not clear what is the law whereby they are governed. They all agree in this, that the two four-

tains of their law are the laws of England and the acts of their own general assemblies; but how far both, or either of these is to take place, is in the judge's heart, and is applied according to their particular affection to the party [in the case] (Rankin, 1965: 16-17).

In 1702 Nicholson returned to Virginia for a second term as governor for the Virginia Company. He had become more arbitrary, not enjoying his posting, and alienated many of the colonists. On the General Court, he argued that the colonists did not enjoy the traditional common law freedoms since they fell under the jurisdiction of the Virginia Company (Rankin, 1965: 20-22). The position was a direct violation of the Quo Warranto proceedings so common in feudal times, unless colonists were equated with villeins or cotters and thus not seen as "free", but reflected the growing reliance on statutory mandates which coincided with the emergence of the modern state.

Tension simmered. In 1705, the governor next attempted to have the General Court and county courts declared the only courts of record in the colony. The proposal was reviewed by the Board of Trade and rejected since the Crown demanded to retain its royal prerogative to hear appeals, or to establish courts as it wished. The Governor and members of the colonial council regularly sat as judges on these colonial courts.

In 1748 during a review of colonial legislation, the Assembly of Virginia passed an act defining the proceedings of the General Court. It consolidated some precedents, such as the practice established in 1727 of not having the Governor sit on the Court. The Act was disallowed by the Crown, but after both the Council and Assembly of Virginia appealed, the King agreed to allow the act to be re-introduced with a few amendments. The result granted the colonial assembly the power to define the processes for its Courts.

The Virginia experience illustrates the continuation and evolution of the early General Quarter Sessions system in the colony even though it had fallen into disrepair during Cromwell's reign. Massachusetts offers an alternate illustration of the evolution of these same institutions. The settlement in Plymouth in 1620 was based on a customary form of church covenant. The colonists thus assumed responsibility for organizing their local affairs. When their governor died, he was replaced by a member of the community. Others assumed responsibility for local offices through election by community members. The election was reminiscent of the regulation of community affairs at the time of the hallmote or sheriff's tourn.

The community meeting or township meeting was enshrined in the 1629 charter of the Company of Massachusetts Bay in New England. Constituent townships sent deputies to the General Court of the Company. Affairs of the township, the election of officers

and representatives to the General Court were all conducted in these township meetings. The male head of each household was expected to participate. This practice of governing accentuated the election of representatives and the conduct of local affairs in each township, a procedure long practiced in feudal England. This ancient custom was transformed by the commercial character of the charter, however. Although it originated from the Crown, the partners were all resident in the colony. The result was a de facto devolution of power to the colonists. This autonomy ended somewhat in the standardization and review of charters after the restoration. In 1691 the Governor was appointed by the Crown.

Thus, in a puritan colony and in a largely aristocratic colony the traditional structure of governing, including the constable/quarter sessions arrangement survived. In the former, the town meeting was the most significant body and the annual election of the constable, coroner and sheriff was common. In the latter the justices remained more significant in their selection, but election was also accepted. The partisan conflict which ended the effectiveness of the system in England seems to have had less impact in the colonies, since both colonies were relatively homogeneous, even though they might have favoured opposing factions in the homeland.

Policing in the United States thus shares a common pre-history with the United Kingdom. After the American Revolution, the constitutional division of powers did not permeate to the local level. There, the democratic ethos and a belief in liberty promoted popular institutions. In contrast to power permeating down through the system of government from the level of state, local government was to have its roots and its legitimacy in its community. Town meetings would decide policy. Local judges, constables, and coroners would be elected. Local government fell firmly under politics. One of the founding fathers of the American federation, James Madison, had warned of the tyranny of the majority in such a situation. A defined set of individual rights in the first set of amendments to the American Constitution went some way to off-set that concern.

The belief in liberty and the importance of citizens assuming responsibility for their public affairs, as advocated by Thomas Jefferson and later Andrew Jackson, had a profound impact on municipal government and thus policing. Jefferson, another founding father, was a committed advocate of democracy. In his scheme of government, the people would participate in town meetings. These towns would have such a broad range of power that they were called "ward republics." Justices would be elected by these wards and they would gather to constitute the county court. The scheme was reminiscent of early Parliament. At the ward level, the local citizen participated in all decisions and assumed responsibility for their implementation. Four local officials were elected to perform public duties; the warden, the justice of the peace, the constable and the captain of militia. Beyond the ward level,

state and national governments assumed responsibility for issues of wider concern but residual powers remained at the local level.

Andrew Jackson shared Jefferson's values, but added a populist vein which also was anti-professional. He argued that the generalist or amateur citizen in a community was the hidden strength of the American nation. The elected official acted on behalf of the citizens in the name of the community. Local government thus was the foundation of the state since it alone rested on direct citizen involvement.

Jackson's views were popular in the 1820's and 1830's. They thus coincided with the creation of early police forces in urban centres. For example, in New York city the widespread social disorder of 1830 resulted in proposals to establish a police force modeled on the Metropolitan Police experiment of 1829. The form the New York Force took reflected the influence of "Jacksonian Democracy". The New York patrolman was a citizen selected by local politicians to represent the needs of the community. Mayor Isaac Varian described the police, in 1839, as 'but a part of the citizens' (Miller, 1977: 17). No municipal job was seen as beyond the competence of the normal, intelligent citizen. The result was a partisan, politically controlled police force with a mandate to control "lower or disreputable orders". Force was commonly used to disperse crowds, and discretion by constables seems to have been accepted on a day by day basis by members of the community. Criticism of the police, when it emerged was answered by arguing that "a somewhat inefficient policeman was inevitable in America since liberty was at the heart of the American genius" (Miller, 1977: 16-18).

Such an ideological commitment endorsed community power yielding a fusion of power in the electorate at the municipal level which counterbalanced the separation of powers and the system of constitutional checks and balance designed to avoid an excess of power in any one office at the state or national levels. The formal, hierarchical legal system emanating from the American Constitution ensured that states did have the power, in law, to set limits on specific municipal powers but the force of the Jacksonian position bolstered the town meeting traditions in smaller centers and the election of municipal councils and senior civic and judicial officials in the larger ones. The citizen was the source of authority for all aspects of local government including the administration of justice and law enforcement. Only when one reached the state and national levels did specialized courts provide an external review of the exercise of discretionary executive powers.

The political corruption which resulted led to reform movements at the close of the nineteenth century. Good government leagues, progressives, and other reform advocates demanded that municipal government be impartial and efficient. They advocated apolitical city managers, smaller councils and the professionalization of municipal employers including police services. But, the

ethos of local democracy was strong enough to withstand the removal of the very visible police chief from politics. The Mayor as the person responsible for the preservation of the peace in the municipality assumed responsibility for the appointment of the police chief in strong mayor-council systems. The police chief remains elected in most small municipalities. The non-political appointment of a police chief remains the exception even today. The result leads to stories such as the following told by a former Mayor of Minneapolis:

To most of the nation, Minneapolis is a uniquely endowed city at or near the top of almost every national "quality of life study" ... An outsider examining this seemingly model American city would be hard pressed to understand why its police department could have been embroiled in such difficulty throughout most of the 1970's.

In that decade alone the department changed police chiefs seven times, with an equal number of turnovers at the command level. My own first campaign for mayor in 1979 was dominated by the issue of who should run the police and how best to professionalize the department. The conflict within the department began in 1969, when the head of the police union was elected Mayor of Minneapolis on a strong law and order platform (Fraser, 1985: 41).

In the United States as a legacy of "Jacksonian democracy" there is a close link between the police and politics. There are numerous cases of police chiefs leaving office and contending the position of mayor. There are others of police constables being elected as members of Council. Since the police are potential political actors there is also some political jockeying between the police chief and mayor on issues related to the preservation of the peace, public safety and order maintenance. This characteristic is significant. Given the fact that the average tenure of a U.S. police chief is three years, the link with politics is volatile. The variation of "Kin-police" in the United States has roots in the values of liberty which went with citizenship. In early police forces, it was hard to introduce the uniform. The constable would perform the duties of office but did not want to be set apart. The uniform symbolized a lack of personal autonomy or liberty. Eventually, early constables agreed to be identified by a copper star worn on the collar. The citizen policeman thus was reinforced by Jackson's anti-professional bias and the individual autonomy cherished by citizen constables.

Within American policing the drive for efficient and professional public service has its roots in the municipal reform movement of the late nineteenth century. Although the police chief remained an appointee of the Mayor, since following British tradition the Mayor was responsible for preserving the peace in the municipality, the police attempted to define their service as a

profession. The definition of a service mandate and the acquisition of specialized knowledge so that that mandate could be performed efficiently were seen as the premise from which an impartial police service could develop. Police professionalism thus became crucial if the police were to have any claim to job security. Otherwise, the Jacksonian myth of the amateur constable would keep the police perpetually ensnared in politics.

Some states responded to the problems of local political corruption through their legal leverage. State legislation was used to set municipal legal mandates as the Municipal Corporations Act did in England. For example, in Missouri the State Governor was given the power to appoint the police chief of St. Louis. Such structural solutions divorced the police chief and thence the police force from municipal politics.

The desire for police independence was bolstered by the impartial status of policing in Britain. The two systems were very different. The new police in England were citizens who acted as servants of the law. Their power was under the law. The Commissioners of the Metropolitan Force were answerable to the central government. In other municipalities a Watch Committee oversaw the police. Constables wore uniforms and for the first forty years of their existence were not even allowed to vote. The police were to be outside politics. Conversely, politicians were not permitted to interfere with the law enforcement decisions of a constable. The tradition of the constable as a peace officer who enforced the law was firmly adhered to in the courts. This distance from politics was not available to the American "Kin-police." Professionalism thus provided an alternative avenue for job definition and security. The definition of a clear police mandate, and the acquisition of the expertise to meet it, would insulate the police from external erosion in the United States. National agencies such as the Federal Bureau of Investigation, not so closely linked to local politics, thus provided an important American model for "law enforcement".

After the Second World War the automobile, organized crime, the challenge posed by the mobile anonymous criminal, information processing technology, and crime detection expertise all became significant symbols for the police mandate. On the other hand, crisis intervention and risk attracted peoples' attention to the police. The competent citizen overcoming challenges became transformed in the police stereotype to an image of superman or the devil incarnate. Jackson had been externalized. But, professionalism also moved the police, as a service agency, away from their community. Insulation from politics meant distance from community support and increased vulnerability to popular symbol and stereotype. De Jovenel's warnings of public images of distant rulers and their impact on the legitimacy of the state, or vice versa, echoed in American policing.

The close local linkage between police and politics was counterbalanced somewhat by the law. Starting with the Warren court

the national judiciary has intervened to define appropriate police procedures if the rights of a citizen are threatened. Decisions such as the Miranda case have provided a focus for police training and management. At the personal or force level, the liability of constables for exceeding their legal mandate, or the force for not providing proper personnel screening or training have provided a further legal check on the police. Individualism was entrenched by the American Revolution as a central value of government before it transformed the social and political system in England. In the United States, individual rights can be invoked in law against the police. To illustrate the point, "Police misconduct suits in state courts rose from 1,556 in 1967 to 8007 in 1976." An even larger shift occurred during the same period under federal civil rights actions (McDonald, 1985: 228). The result has been tightened, defensive police management. The legalistic result has furthered the trend for police insulation from society through professionalism.

To counterbalance this legal caution, sociologists and criminologists have taken increasing interest in the police. Following in the steps of the early English reformers, they are using rational, empirical techniques to evaluate the police in accordance with long standing police objectives such as the preservation of the peace, or assumed aspects of the police professional mandate such as law enforcement and controlling crime. The close link to community politics meant that the American "Kin-police" could adapt to local political or organizational styles. In 1969, this flexibility was documented by James Q. Wilson in his Varieties of Police Behavior: the management of law and order in eight communities, (1969). At about the same time, the police became the focus of intense study. Some researchers questioned the focus of policing. Was reactive law enforcement an efficient use of public resources or should the police focus on problems indicated by the analysis of criminal incidents? Herman Goldstein developed a "problem oriented" approach for policing based on his experience with the Chicago police and his research and evaluation of police programs since (1977; 1979). Others such as Robert Trojanowicz studied the impact of foot patrols on police-community relations and the preservation of the peace (n.d.).

The work of this generation of social scientists has had a profound impact on policing in the United States. Offering technical substance to claims of police professionals that they do control specialized expertise, they have provided the police with an external base from which to bolster their independence from politics. The building of a research and evaluation capacity within the police service has thus strengthened the hand of the police manager.

The tension between the political expectations of the community or local elected official and the objectives and costs of police programs provide an interesting perspective from which to study the evolution of policing today. This primary relationship between police and politics has its roots in the unique strength

of Jacksonian democracy in the United States. Legal controls place limits on police action insofar as it affects the individual but it is an external control. The police in the United States thus have had to rely on the functional characteristics of the early reform package of the 1830's to protect themselves from politics.

In this context, recent trends toward community oriented policing take on added significance. G. Kelling noted the political implication when he stated: "When police work intimately with communities and share responsibility for policing neighbourhoods with citizens, they gain from them the moral authority to work effectively" (1985). The old fusion of powers at the local level reemerges but in a new guise. If the police can have their professional status accepted and then work with the community to build up a political following there is nothing to stop that becoming a step into politics. Events in Newark, Baltimore Co. and Flint already illustrate the point. The challenge of policing and police leadership in the United States is one of setting the balance between community interest and public service in a way which complements, but does not undermine, local political processes. As legitimate players in the game of politics protected by the legal values of equality and impartiality, and yet as agents of coercion under the law, that challenge must be addressed with caution if fundamental political values are not to be threatened.

Policing in Canada and the United Kingdom

Both Canada and the United Kingdom missed the influence of Jacksonian democracy. The significance of local self-government to the health of the polity was well-known to the more radical English reformers of the 1830's. Arthur Roebuch, for example who served briefly in Lower Canada led the battle for municipal reform in England. He advocated a realignment of municipal boundaries, and popular elections for all persons owning at least 10£. Another, Charles Buller was influenced by Alex de Tocqueville's description of the importance of local democracy in the United States. (See Hansard, British Parliament 36, 698-701, 20 February 1837 and Crook, 1965). The devolution of power to municipal government, and the standardization of municipal power under a Municipal Corporations Act thus owes some debt to American experience. That influence, occurring after the police reforms of 1829, eased the definition of the Metropolitan Police as impartial officers under the law since they were made answerable to the central government before municipal reform was launched. Later reforms, outside the Metropolis, in recognition of municipal government, placed the police under committees of the municipal council. The central government retained the power, however, to review municipal police performance.

Local government in Canada had its source in the town meeting as it developed in the United States and in the significance the English reformers attributed to municipal institutions. C.F.J. Whebell in a provocative analysis of early local government in

Ontario, "The Upper Canada District Councils Act of 1841 as an Instrument of British Policy," (1986) (Unpublished, 1986), documents the overriding significance of the English reformers in the development of a system of municipal government in the province in 1849. Whebell comments:

"Indeed, it is no exaggeration to regard the Baldwin Act of 1849 and associated legislation as the apotheosis of English municipal reform at least as it was conceived in the 1830's" 1986: 64).

Elected, legally mandated municipal institutions in England and Ontario were influenced by the significance attributed to local democracy in the United States. The context of the two countries differed however. Jacksonian democracy was not exported. In Britain and Ontario the Crown remained the symbol of state. Parliament remained supreme. Although the political currency in all three countries had shifted to the individual, in Britain and Ontario, an elite controlled the strings of power and they were pulled through the traditional political institutions. The "Kin-police" of Metropolitan London thus were more faithfully transplanted to municipal Canada than to the United States.

In addition, a "ruler-appointed police" modeled on the Royal Irish Constabulary played a significant role in preserving the peace in Britain's colonies including the Canadian prairies, British Columbia and Newfoundland. This force was used as an instrument of the Crown, to preserve the peace in regions where British traditions and loyalty to the Crown could not be assumed. In Canada it was used to precede eastern settlement on the plains, to maintain order in the Caribou gold rush and to counter the threat of sailors if they went on a spree in St. John's. Since the relations of "ruler-appointed police" to community differs definitionally from the submersion of "Kin-appointed police" in community, they must be assessed separately.

The Evolution of Policing in Ontario

Municipal policing falls within the jurisdiction of the Canadian provinces. The evolution of policing in Ontario will be used to illustrate the development of Canadian policing. It is similar to developments in the other English colonies in British North America, but differs from the western provinces which used the resources of the national Royal Canadian Mounted Police, modeled on the Royal Irish Constabulary, quite extensively.

Ontario like the American colonies and rural England, was administered at the local level by justices of the peace meeting in General Quarter Sessions. Unlike England or the American colonies, those justices were appointed by the governor in consultation with the colonial elite which lived in Toronto. Justices of the peace lived in the districts or townships where they performed their duties and provided a link between the capital and the far-flung reaches of the colony.

The Justices for each district, and later county, met each March to appoint a High Constable and then constables for each township along with other local officials. The traditional system was implemented in 1784 and confirmed by statute in 1792. To complement the General Quarter Sessions at the county level, townships were permitted to hold town meetings to elect local officers including constables and to settle local policy matters such as the height of fences or the markings on cattle. The influx of United Empire Loyalists, who demanded the continuation of their local government forced this duality. Town meetings are first noted in 1790. By 1793 any township with over thirty households was entitled to conduct its affairs through such meetings. Two wardens were elected to oversee the affairs of the township.

The link between the General Quarter Sessions and the township was the local justice of the peace and the county or district constable. They attended township meetings to ensure the householders conducted their affairs in accordance with their statutory authority and elected the required officials. If they didn't the constable would so report to the General Quarter Sessions and the justices would fill the official void, appointing citizens from the district.

The inquest also was used by General Quarter Sessions. Wardens would present reports on affairs in their township. If the justices wished to assess the state of township roads, to learn the facts surrounding property disputes or the status of local accounts, the constable could be dispatched to seek the information and report back to the court. The justices thus monitored local administrative affairs and had the power to enforce their will through their legal mandate.

There was no coherent structure to the constabulary. The High Constable was appointed by the General Quarter Sessions. So were constables. They were nominally under the High Constable, but constables elected by township weren't. Many were often bartenders. All were sworn in as peace officers by members of the judiciary and were bound to serve the law. The monitoring of township meetings to ensure statutory positions were filled, broadly interpreted, ensured the law was complied with.

Efforts to place some form on the rural constabulary date back to 1855. At that time, a recurrent proposal was the creation of a provincial constabulary with locally appointed constables, confirmed as provincial constables by the Lieutenant Governor, and then subject to review by a provincial Inspector appointed for each district or county. The organization of the developing Royal Irish Constabulary before it was structured under a centralized command was similar. The proposal never met with much success. Its chief protagonist John Stanfield MacDonald had a draft bill ready for the Ontario legislature in 1870. But he was defeated before it could be passed. Traces of the rural constabulary system could be found in Ontario until the end of World War II.

In urban centres, early municipalities called boards of police, were authorized to appoint constables upon incorporation. These constables were hired after the annual municipal elections and were often fired the next year, if a new set of politicians was elected. Both whig and tory factions were active in provincial and municipal politics. The police usually were partisans in the conflict much as they had been in local politics in the United States.

This corruption caused the provincial elite to react. They firmly controlled the General Quarter Sessions through the appointment of justices of the peace and magistrates. In 1858 they strengthened their control over the maintenance of order in urban centers. In that year the provincial legislature (21 Vic.c.99) required every city and town to establish a Police Office. There, the Magistrate or mayor decided matters related to the administration of justice. (The mayor as in England and the United States, was given the status of a justice with responsibility for the preservation of the peace of the municipality). These municipalities were also ordered to appoint a Board of Police, not to be confused with the earlier name for municipal governments, to manage the local police force. The council still appointed and dismissed members of the force, but only the Board could suspend a member. The Mayor, Recorder and Police Magistrate were the members of the board. The last two were provincial appointees and were junior judicial officials. The boards removed the police from the direct influence of politicians, placing them under the provincially controlled judicial system. In 1873, when the recorder's court was abolished, and the city or town was placed in the surrounding county for judicial purposes, the county court judge replaced the recorder on the board. The next year the provisions were amended so that towns and smaller municipalities could hire a local police force if it was managed through a committee of council. Boards of police remained in place in larger centers.

During the 1880's and 1890's, members of the constabulary across Ontario lobbied the provincial government for a change in their status. The constables in rural areas or small towns wanted to enhance their career status by forming a provincial constabulary. The lack of provincial control of county and small urban forces was criticized as offering inadequate policing. In presenting their briefs to government they argued at one point that "Ontario was at least forty years behind Great Britain". The reference was to the Municipal Corporations Act of 1835. Emphasis was placed on the need for provincial monitoring of the constabulary outside the "well organized city and town police forces."

Ontario thus inherited elected municipal institutions modeled on the town meeting. The United Empire Loyalists demanded their presence in their new colony. The English reformers, who were influenced by American assessments of the importance of municipal institutions to the freedom and liberty of the population, used their political clout to realize a province wide municipal system

through the Baldwin Act of 1849. As municipalities were created, by petitioning the colonial legislature early in the nineteenth century, they began to follow the path of politically partisan police. Rising religious and social unrest provoked the dominant provincial elite to react. The fervour of Jacksonian democracy stayed south of the border. The police were "removed from politics" in cities and towns by amending the Municipal Institutions Act. Instead, the day-to-day management of the police was given to a Board of Police Commissioners dominated by members of the judiciary. The view of the police as impartial servants of the law was thus imposed on municipalities through structural adjustments in the legal mandate of municipalities. That model of policing was consolidated through the practice of hiring retired senior military officers as police chiefs. Management became highly-structured, discipline clear, and the constable following British precedent an officer under the law. The "Kin-police" concept remained since the municipality hired and fired its constabulary. But administratively and operationally the police managers focused on the police service, the internal operations of the force and the law. The police, except when they were advised to emulate the Metropolitan London model, or Peel's Principles, were aloof from the community.

The tendency to aspire to an impartial, "professional", police led to changes in rural Ontario. The creation of a provincial police force in 1909 and its gradual spread across the province filled the gaps in rural policing. First starting in the 1870's it provided detective services, especially in support of smaller police forces or the rural constabulary, when mobile, specialized criminals operated out of their area. In an era when each bank had its own currency, forgery or counterfeiting became a common problem.

In 1903, the nascent provincial police provided police services in Northern Ontario where the province attempted to preserve the peace as prospectors moved north in search of gold. Rapid growth occurred at the end of the first World War. Under the able leadership of Major General V.A.S. Williams, who hired "returned men", the force deployed across southern Ontario replacing the rural constabulary in those counties where the constables had not become a cohesive, police presence. The provincial force continued to expand through the depression, incorporating the highway patrol and game wardens.

By the end of World War II, a large deployed Ontario Provincial Police force was responsible for law enforcement in most of rural Ontario. Personnel were hired provincially and posted to detachments across the province. Municipalities could negotiate to have the provincial force provide municipal police services in lieu of a local force. The result offers a further illustration of public tolerance of centralized policing in the province. As long as its members were personable, fair and enforced the law impartially they were accepted as outside local politics. Reith's "Kin-police" and "ruler appointed police"

almost merge in the contractual substitutability of the local municipal force with the contracted O.P.P.

During the 1960's and early 1970's the conflict between municipal control of its own police force and the provision of even cheaper, or "free", provincial police services was played out. Small municipalities were ordered and then, when political reaction mounted, were encouraged with economic incentives to abandon their small forces and replace them with the more professional O.P.P.. Municipal autonomy was a major theme in the debate. And, it was countered by demands for standardized, professional police services across the province. The results were inconclusive. Instead of direct confrontation, police standards were assumed as a provincial responsibility through the creation of an Ontario Police Commission. Comprised of provincial appointees, led by a member of the legal profession, the three person commission oversees disciplinary appeals, the size and professional competence of municipal forces and can comment on the adequacy of their funding. Professional standards are thus enforceable over municipal forces and over local politicians. The structural solution of 1858 and central review of the township reemerged in a new guise. This time a provincial commission with statutory safeguards to insulate it from partisan politics would check the performance of local municipalities. The police, although a public service, were to be insulated from local politics since they were impartial enforcers of the law. Instead, they should answer to the legal system or its agents at the provincial level. (Reference under the Constitutional Questions Act 20 O.R. [1957] Court of Appeal).

In Ontario, the provincial government has not been hesitant to use its legislative power to remove the police from local politics. The existence of a provincial elite made the initiative politically feasible. The legislative device maintained elite control of the administration of justice and more recently ensured that local politics could not threaten the "adequacy" of local police services. A distrust of politics in matters affecting the rights and property of individuals seems apparent. Impartial policing under the law seems to exist as a value beside a basic demand that the province not unilaterally abolish the local police force. Centralization of control acknowledged both values without forcing the test. (Experience with the introduction of regional government is a further illustration of the special status granted the police. Municipal reform, even if administratively necessary, was so politically volatile it threatened the future of the provincially dominant Conservative government).

Ruler-Appointed Police

In western Canada, the acceptance of the Royal Canadian Mounted Police as the provincial and local police force outside the major cities parallels the Ontario experience. A "ruler-appointed police", the Force provides professional services to communities but is not a part of the community, nor is it directed

by local politicians in the day-to-day delivery of police services. Contracts set the level of service and discussions between local force commanders and municipal officials set the form of service delivery. But, specialized resources, discipline and command questions remain within the police force. The police thus are outside the community providing an impartial service under the law and divorced from partisan local politics.

Policing in the United Kingdom

In the United Kingdom police reform also was buoyed by demands for standardized, professional police services. The central government had a right in law to inspect local police services since the nineteenth century. That power bolstered the demands of career oriented High Constables in Ontario, for similar provisions. Over time, urbanization, the mobility of the population and the development of specialized identification and investigation tools made specialized, trained policemen an asset. They could work more efficiently in a society of strangers. Specialization and problems of local market and financial resources led public administrators to consider the creation of regional units of local government. Both England and Ontario struggled with regional government reforms in the 1960's. England was just ahead of Ontario. Police services were to be regional. The adjustment aggravated local community sensitivities. That tension is still being felt. But in England, it coincided with a rapid ethnic transformation of urban society. The resultant social challenge made the structural issues seem insignificant. In Ontario, community reaction ended imposed regional reform. Regional police services were created in the new regional municipalities. There, structural reform offered an opportunity to appoint a new generation of police officer. Without the social crises facing their English counterparts, these forces have become major centres for experimental police-community programs.

In England, the challenge of providing an impartial police service in a diverse ethnic community which is not socialized to the broader aspects of the legal or social system, placed structural reform in an atmosphere of crisis. The police were designed to preserve the peace and maintain order as impartial servants of the law. As "Kin-police" they were members of the community with only a few powers beyond those of other citizens. Social unrest strains the police. Social transformation and the resultant social and political instability required a reevaluation of police-community relations. The problem is fundamental. To meet the needs of both the diverse new, and the threatened old, communities, the police must readdress their mandate. In 1830 the reformers attempted to redesign social programs to harness the potential of the modern state to the vision of freedom in a laissez-faire environment. Their initiatives included changes to the penal system, welfare, employment practices, sanitation, the criminal law along with the creation of a new police service with no small share of the responsibility for implementing their dream by preserving the peace and maintaining order. In our termin-

ology, that mandate included not only what we know as law enforcement but also control of air pollution, monitoring the standards of cheap lodging houses for the poor, enforcing the Contagious Diseases Act and parole (Miller, 1977: 18). As both generalists in close contact with the public, and impartial servants of the law, the Metropolitan Police were given a challenging mandate - the prevention of crime, the preservation of the peace and the maintenance of order.

Driven by financial considerations and the need to harness specialists efficiently, the 1960's witnessed extensive structural reforms. The modern state, through law, transformed the municipal structure so that local governments could administer and deliver significant social services to their regions. The police were one such service. The administrative reforms failed to address the challenges posed by changing social needs. In the past 150 years, social services have developed and flourished, defining and redefining their mandates to reflect social needs as perceived from their technical or functional perspective. The police are one of those services, but unlike social services with narrow technical competence they act as generalists in their community relationship. The gulf between the original mandate of the police in a reform package, and the relative complexity and autonomy of the myriad social service and legal agencies and professions today makes the simplicity of the creations of the 1830's and 1840's seem almost romantic. For the police the uniqueness of their role requires that the police-community relationship be re-thought. In England, the police remain generalists, although the image, largely from the United States, of the specialized law enforcer has had an impact. The police-community mandate is under stress, on the one hand since it is the most visible link between society and the state and, on the other, since as generalists the police of necessity transgress on the professional sensitivities of more narrowly focused, modern social agencies. In that context, the question which remains is: What is the role of the police in the definition of how government should adjust to its contemporary social environment?

As generalists, in close contact with communities, they are the first social service to encounter social problems. As impartial enforcers of the law, who are also members of society, to assume a significant role in the prescription of social solutions would challenge their legal independence; not to, would ignore their responsibility for the preservation of the peace. If the police assumed such a broad role, who would control them? How are they to relate to the law, to politics? It is not surprising that some of the most insightful material on this problem is found in the recent English literature on policing. (John Alderson's Policing Freedom, and the set or provocative articles in the winter 1987 issue of the British Journal of Criminology are just two illustrations). Alderson's solution is to equate policing with the "body politic" and place the police within communities as they address the challenges of preventing crime. In an attempt to preserve the present status of the police under law in the legal

structure of the modern state he comments: "The police, however, have a duty to uphold the law as long as is humanly possible; but they also have a duty to advise governments of the limitations of the rule of law in practical affairs. This is not to fail to recognize that the concept of the rule of law is the sine qua non of democratic societies" (Alderson, 1979: 200). His struggle has forced him back to the assumptions of the modern state, the dawn of the era in which the "new police" were created. The challenge is to preserve our freedom, and discuss the role of the police in the modern social context, not only as officers under the law but as generalists preserving the peace in community. The requirements of change and security and the impact of any balance set on subsequent relations between the state and society, as raised in chapter one, leap to the forefront. Does the feudal era have anything to offer. Is there a truth before the Dawn of Time?

CHAPTER V: POLICE LEADERSHIP - ITS PLACE, POTENTIAL AND PROBLEMS

" ... In any case, we have seen that Anomia cannot last. It is not just chaos, but also a vacuum which attracts the most brutal forces and powers. We have also seen traces of such crude power and its arrogance in the contemporary world. Suffice it to say that my worry is that the road to Anomia will awaken Behemoth as well as Leviathan, and that a new wave of totalitarianism will sweep the world.

... Berlin 1945 is after all not just a telling illustration of anomy, it is also the result of a process which began with anomic trends and totalitarian responses to it ... (p 159)

... We have allowed this great force of progress to become an excuse for marginalization and exclusion. This will not do. Economic and social policy can, and must still be informed by the search for the greatest life chances of all members of society, and that means, by citizenship for all. The majority class will have to give if it does not want to lose all and this too is a task for those who want liberty above everything else. Law and Order is the key (Dahrendorf, 1985: 161).

The balance between order and liberty counters the unrestrained demand for individual autonomy. Using Berlin, during the transition between the defeated Nazi government and the arrival of occupation forces, as an example of a moment when no government existed, Dahrendorf described the disorder of the time. He concludes, that for private property to be possible, for persons to live in freedom and enjoy liberty a basic context of order has to exist. The state through myriad legal institutions and regulations provides that context. The challenge, although it has become so obvious that it sounds like a cliché, is to continually adjust those institutions so that they reflect the needs of society and its citizens.

In the 1985 Hamlyn Lectures to the University of London, Dahrendorf grappled with the problem of violence in society. He argued that a major source of violence is the success of the dominant class in excluding marginal members of society from significance in an attempt to protect its own position. The inclusion of the marginalized as citizens in a more open liberal-democratic society is necessary, if the society is to survive. At the root, the challenge addresses the character of law and order. How does the state perceive society as it maintains order through law? How do members of the society perceive the state as it implicitly or explicitly regulates their behavior? As de Jovenal points out, this aspect of state-society relations is dominated by the place and performance of the police.

Dahrendorf recognizes the many facets of state-society relations: the importance of loyalty to ongoing institutions; the economic distribution of goods which offers the potential for participating in productive activity; and the maintenance of law and order which provides the context for civilized human interaction. Since law defines the capacity to exercise power on behalf of the modern liberal democratic state, he argues that the law must be reviewed and updated to ensure institutions either continue to be a focus for public loyalty or are changed to reflect contemporary social needs. Without adjustments in institutions and the inclusion of the marginalized in liberal society, the state must enforce order in the name of the dominant class.

The preservation of the peace by including all as significant is a logical completion of the liberal democratic ethos. It also goes some way to meet Alderson's proposal that the police protect the processes of democracy. Without the preservation of the peace in a broad sense which permits the forces of change to operate, the state becomes a brake on the forces of change and tension develops between the state and society. To nourish liberty in such a context, the order maintained may not be to the liking of the elite, or dominant class, instead it must ensure it offers all the chance to participate. When individuals are denied access to the processes of change in the state, then the marginalized, if they wish to be acknowledged, are likely to pose a challenge to the peace of the society.

Dahrendorf's framework assumes the rational framework of the early English reformers and their values of individualism, freedom and liberty. It also assumes the legal framework basic to our understanding of equality in the liberal democratic state. He is thus working within the framework of the reformers of the 1830's and 1840's as he turns his attention to contemporary police problems of individual violence, personal insecurity and the tensions arising from the pluralism of modern society.

The Police Manager Today

The status of the police has a direct impact on the potential of the police manager to play a creative role in responding to evolving state-society relations. The modern police manager is well qualified to handle problems of law enforcement. Modern management techniques have been harnessed in an attempt to stretch limited public revenue and resources as far as possible. Organizational devices to evaluate programs, allocate personnel and provide planning support are all available. The police manager also has to be able to communicate with managers of other related public services, local politicians and citizens. These tools and skills are analogous to those of other private or public sector managers if law enforcement is seen as the objective of the organization.

In performing this tidy task, the police manager often does not have the time or the tolerance to see the broad value or

systemic implications of specific police actions. Instead such considerations may be dismissed as theory, or else they are eclipsed by the crisis of the moment. The shift to a strategic perspective where the police manager is sensitive to, and then aware of, the stresses in the communities policed, is a prerequisite for the police if they are to rise to the challenge Dahrendorf poses.

As generalists straddling the chasm between individuals and the state, the police are in a unique position to monitor the general problems of the society. Narrow professionalism may be the privilege of a technically specialized occupation such as medicine, the law, or the plumber, but it is not available to the police, whose mandate since 1829 has been broad insofar as community contact is concerned.

Within policing the drive toward professionalism as law enforcement, criminal investigation and crisis resolution has tried to set a narrow police mandate. This tendency, especially strong in the United States, reflects an attempt to provide an exclusive mandate for the police based on expertise. If one were established, then the police professional could be insulated from politics as long as action was rooted in that technical area of competence. Directed patrolling and call screening provide illustrations of the potential area of professional competence such advocates would claim.

The broad police mandate would require the police manager to be conscious of the place of the police in the context of government, politics and the law. The police manager would also have to know the problems emerging in the communities policed, their structural or local root and how to respond so that forces of change are allowed to operate while the general peace of the community is preserved. Such a broad mandate far exceeds that exercised by the police leader today but it falls within their social function. It would require a new dimension in police training and a careful evaluation of the status of the police manager in society. If realized, it would offer the police service the capacity to address the challenges of preserving the peace, preventing crime and protecting the life and property of citizens without exceeding its legal mandate. It also would require a new aspect of control to ensure that order maintenance did not become an excuse for intelligence gathering which eroded personal or political freedom.

The Place of the Police Manager (U.S.)

The potential for police leadership is dependent on the legal and structural environment of the police manager. This varies even within the "Kin-police" traditions of the United States and the United Kingdom. In the United States, with the exception of those municipalities where the police chief was removed from politics by the Good Government Leagues in the late nineteenth century, the police manager remains closely linked to politics. As

seen in chapter 4, the close relationship between police and politics has at its base the unique strength of Jacksonian democracy. Local government is the well-spring of democracy. All people must participate and through public involvement develop loyalty for their community and country. This emphasis on the importance of politics at the local level, makes it the source of power not only for municipal politicians but for senior local public officers. The police chief, as one of those officers, receives legitimacy through community support. The mayor, as the senior elected representative of the municipal corporation, is responsible for the preservation of the peace. As seen in Minneapolis, when the police as citizens are involved in politics and the police chief is accountable to the public, problems arise in police management. A second illustration from California, witnessed an innovative police chief transform a local force to successfully meet challenges of crime prevention. His success provoked the Mayor to see the police chief as a potential threat. Subsequent political manoeuvres to fire the police chief were successfully countered, but at the expense of subsequent police innovations. The chief did not have the energy to marshal support for his political defense and to pursue his reforms within the force. Police proximity to politics thus has a direct impact on police leadership.

The Potential of Police Leadership (U.S.)

The police manager, in advocating a narrow professional mandate rooted in a unique technical competence for the police, is establishing a basis for personal and police force credibility if politics turn stormy. Political vulnerability thus accentuates the importance of creating a specialized police mandate. Without recognized technical expertise, politics and the Jacksonian belief in the omniscient citizen pose a threat to the domain of the police manager. The short average tenure of American police chiefs, about three years, illustrates the point.

Recently, with renewed emphasis on the importance of public support if policing is to be effective, police-community programs have added a new facet to the police managers' position. The efforts by social scientists to review and evaluate police programs generated a number of fundamental questions. One, asked by Herman Goldstein, was why focus on reacting to each criminal incident, why not analyze criminal incident data, define problems which might appear from the incidents and direct resources to solving the problems. Problem-oriented policing offered a focus for priority setting within the police organization. The police manager had the chance to intentionally direct resources (Goldstein, 1977).

The potential of crime analysis and deployed policing to respond to sources of crime was realized in directed policing experiments. The police manager, usually after consultations with municipal politicians, would target police resources on specific community problems. Such action, in concert with politicians and rooted in criminal statistics or public complaints, was a

political, as well as a policing, asset. The close linkage between police and politics thus can be an asset for the police manager. In Newark, New Jersey for example, the person responsible for introducing such flexible police deployment practices was soon Mayor of the city.

A second manifestation of police/community relations which has a direct impact on police leadership is the set of programs designed to return the police constable to the community. R. Trojanowicz and his well publicized evaluation of foot patrol, in Flint, Michigan, offers an illustration (n.d.). These programs establish specific police resources, a store front station or a patrol constable, in a specific community. Police personnel are introduced to local residents and provide an outlet for local complaints and problems. Discretion is available so that the community constable can respond to community needs. The independence has generated a number of interesting results. Some local constables became popular as "fixers". This promoted their political visibility and one reportedly ended up serving on the municipal council. In other cases, the police manager had to respond to complaints from the Mayor when a neighbourhood constable joined the local community while it picketed the town hall criticizing the lack of political responsiveness of Council. A third implication of community/police support is political support during annual municipal police budget negotiations. Flint funds its neighbourhood constables through a publicly voted surtax. In other centres, public protests resulted when the municipal council threatened to reduce the police budget since they would reportedly be cutting neighbourhood services.

Recent developments in policing which have accentuated the capacity of the police to deploy their resources intentionally and which offer close community/police ties have transformed the position of the police manager. With data which evaluates police programs in terms of both the legal police mandate and the broader service function, the police manager can document police response to community demands. The results strengthen the political leverage of the police. The close links between politics and police in the United States makes the job of the police manager intensely political. Police leadership thus is a volatile concept. The law controls the exercise of power but politics permits authority amassed in response to neighbourhood support or public insecurity to be used to create and entrench the police presence. The political relationship between the Mayor and the local police chief thus becomes crucial.

In some cities including Battle Creek, Michigan and Madison, Wisconsin the capping political strategy, although probably unintentional, has occurred. The police have developed community advisory committees which help set some crime prevention policies for the force (Brown, 1985: 75). Such public participation results in the police manager negotiating for policy where once it could be ordered. But in return, police resource needs gain political credibility. For example, a crime prevention program,

already drafted by significant members of the municipality, becomes a politically significant item when presented to the municipal council. The political aspect of police management again rises to the fore. This time, it also integrates the police with the community.

Police leadership in the United States thus acts as the advocate of police professionalism to defend the police from politics. On the other hand, it must build and maintain public acceptance of the police at the least for budgetary reasons. In the volatile environment of politics the police manager is supported by legal limits on the exercise of power by members of the force. Legal requirements and substantive findings by social scientists in police program evaluation and modification, provide substantial grist for the professional mill to counterbalance the "cut and thrust" of politics. The flexibility of defining membership on Police Advisory Committees, in establishing local foot patrol services and in intentional proactive resource deployment furnish political ammunition. Awareness of the potential of such political initiatives will have a profound impact on state-society relations. The challenge of police leadership is to harness the political potential of the police for the enhancement of long term community peace. This requires serious attention to the conscious definition of who the police are serving, and how the society sees the police. If the police are to maintain the well-being of the wealthy and the business community, Chambers of Commerce as major participants on advisory committees, foot patrols in wealthy neighbourhoods and bank escorts will be manifestations of that priority. If the police are to fulfill their mandate as servants of the law-abiding citizenry, other priorities may be more appropriate. In making the choice, the police leader will be addressing the broad service function of the police in society as well as the priorities for internal organizational deployment of scarce resources. The challenge is to tailor political linkages and service delivery to preserve the peace of the community.

The Place of the Police Manager (U.K.)

In the United Kingdom, police leadership occurs in a legally defined institutional setting. The contrast with the state guarantees police independence from politics, places the police constable under the law and reduces the flexibility of the police manager to the implementation of national, legally enshrined, or local policy. The Metropolitan Force with its impartial constable under a Commissioner responsible to the central government set an important precedent for the police service as it developed. Nationally, the Home Secretary retained an interest in local police services as they were created across the country. Through the office of Inspector of the Constabulary their size and the adequacy of equipment, accommodation and other physical resources were monitored. The constable as a peace officer acting on statutory authority, placed the police directly under the courts as the police exercised their legal mandate. The Mayor or Warden of each municipality remained responsible for the preservation of the

peace but a Watch Committee, established by the Municipal Corporations Act, was responsible for the administration of the local police force. The Chief Constable, however, controlled police operations by the Police Act of 1964. An extensive legally defined institutional structure thus established a place for the police outside partisan municipal politics.

Unlike the American police manager, the British counterpart does not have to create a professional mythology to bolster a unique area of technical competence for the police service. "Police operations" as the exclusive mandate of the Chief Constable, is open to "tugging and hauling" when Watch Committee members and the local Chief Constable try to define how far police autonomy reaches. The definitional battle is open to mediation through the Home Office, however. And, in fact, it was. The result was enshrined in Home Office Circulars, as "guidelines" for local forces. Such arbitration maintains the distance between the police and local politics providing the police managers political insulation almost beyond the imagination of their American counterparts. It also is reflected in the established career patterns of senior police officers in the United Kingdom.

Police independence excluded the police from politics at first. A member of the force was not allowed to participate in partisan politics or even vote until the 1870's. Today, legal values are asserted in police governance through the structural requirement that one third of the members of a local Watch Committee be members of the judicial system. The police now vote but they may not participate overtly in partisan politics. Impartiality remains a fundamental value of policing complemented by the original authority of the constable under the law.

The security of the police managers was enhanced by this tradition. Insulated from partisan politics by law and institutional structure, the status of the police is assured. Efficiency of service, national review of the adequacy of police resources, and impartial enforcement of the law are fundamental to the police manager. But, in an intriguing study of police values by Raymond Cochrane and Anthony Butler in 1980, it was found that "the value systems of the police and policed in the United States are more similar than in Britain Indeed, it appears that the British public has more in common in terms of value systems with American policemen than with British policemen" (Cochrane and Butler, 1980: 210). The study showed that the police, over time, were socialized to a set of values which differed somewhat from those of the rest of their community but that the British police shared values which were significantly different, especially with respect to individual justification and human relationships, than the community they policed. Alderson, in a later work suggested police values emphasized technical response competence while the public assessed the police "in terms of human qualities" (Alderson, 1985: 28). Despite popular stereotypes, Cochrane and Butler found police were no more conservative or reactionary than the rest of the community. The British police values seem to reflect the

perception of the constable as a statutory officer under the law. The American police, on the other hand, although somewhat more individualistic than other members of their community, were shown to share values with the people they policed. The difference parallels the police/politics relationship.

The British police manager thus has a challenge bridging police/public perceptions. If values reflect priorities, the impartial police, aloof from community yet serving the public, will have less sensitivity to community changes than their more politically immersed American counterpart (See Reiner, 1985) for some interesting views on the question).

The British response to the challenge illustrates the different legal, structural position in which police leaders find themselves, in the United Kingdom. After the passage of the Police Act in 1964, friction between local police authorities and Chief Constables over the definition of "police operations" led to the creation of a national Tripartite Committee (police managers, politicians and government) to address the problem. Eventually by H.O. Circular 114/1983 the government recognized the need for negotiated settlements:

"the Police Authority (has) an important role to play in contributing to the formulation and review of objectives and priorities within which the force operates the Police Authority and Chief Officer (must) work together to ensure that the objectives and priorities which they determine are both founded on sound professional judgment and best calculated to reflect the wishes and needs of the public they serve" (Morgan, 1985: 73).

In the interim, the Brixton Riots of 1981 and Lord Scarman's Report of 1982 led to The Police and Criminal Evidence Act. Lord Scarman's suggestion that committees be created to bridge the gap between the police and their local community was enshrined in law on January 1, 1985. By section 106, the Police Authority was authorized after consulting with the chief constable, to define an appropriate method of "obtaining the views of people in that area about matters concerning the policing of the area and for obtaining their cooperation with the police in preventing crime in the area." Consultative committees, usually called Crime Prevention Panels, were in place across the United Kingdom often at the district level within police jurisdictions by 1986.

These consultative committees include representatives of the local Watch Committees, the police, representatives from banks, building societies, insurance dealers, chambers of trade, the post office, along with representatives from local welfare agencies including probation services, citizens' advice bureaux, victim support groups, health, youth and church groups. (H.O. Circular 1985/2). Minutes of the meetings are sent to the Watch Committee and the Chief Constable.

The committees seem to have two prime functions. For the police, they become a way of mobilizing community support for crime prevention programs. For the national government, they are a device which enables local communities to define police priorities, and through coordinating services, potentially reduce overall government costs. In regions where there have been few disruptions their usefulness is questioned by the public. The impartial police seemed satisfactory. In areas which have experienced riots and social unrest, the panels are seen as a method of bridging the gulf between the police and the community. Given the potential incursion into police operations, most chief constables seem reserved in their assessment of these committees. Morgan believes they will survive, however, because of their support from the central government (Morgan, 1985: 74). Given the assessment of Margaret Simey, Chairperson of the Merseyside Authority, police managers are faced with a political challenge: "Put bluntly it was the failure of the police authority to fulfill its political duty to ensure that the people were policed by their own consent and according to their own wishes... which had brought the situation to flashpoint" (Alderson, 1985: 28). This responsibility adds a political dimension which requires careful response to the Crime Prevention Panels.

The Potential of Police Leadership (U.K.)

Unlike the American police manager, the British counterpart must work in an institutional context if police leadership is to be felt. Following Mayne's demand that the police act only under the authority of the law, police-community liaison rests on a legal mandate. The senior police manager, instead of reacting to incursions into police turf, can seize the challenge of encouraging the inclusion of all elements, or as wide a spectrum as possible, of the community on the established Crime Prevention Panels. The composition of the panels, as in the United States, will play a significant role in the definition of the significant community for the police. On the other hand, failure to press for openness is also a statement about the perceived service mandate by the British police manager. At the political level, this decision will be central to the definition of police leadership in the United Kingdom. Unlike the United States however, whatever is done, the central government has reserved the right to review the process and the police manager remains secure under the law and outside partisan politics.

The Place of the Police Manager (Canada)

In Canada, the institutional complexity of Britain and the political vulnerability of the United States are absent. The impartial police service is accepted as the norm. In the province of Québec where the Mayor has traditionally exercised significant control over the local force, the police are most sensitive to politics. Even there, structural controls have been introduced to entrench police insulation from politics since the late 1960's.

The acceptance of impartial policing has resulted in the recognition of centrally directed, deployed forces as analogous to local municipal forces as long as the local municipal council can negotiate the terms of local policing with the province. In western Canada, the R.C.M.P. provide municipal police services in many local communities. In Ontario, the Ontario Provincial Police provides a similar service. These forces maintain professional control of their personnel. Local detachment commanders discuss law enforcement activity with the local police governing authority, but the command and discipline of detachment personnel rests within the force. The cost of policing reflects the resources deployed on a scale set in negotiations with senior governments. The result is an acceptance of an external police force which adheres to the values of impartial policing under the law, and is controlled only through the size of its budget. Even on that item, limits are enforced by provincial agencies responsible for overseeing the adequacy of local police services. (For an interesting article on the relationship between centralization of police services and democratic values, see Berkley, 1970).

The municipal police manager is insulated from local politics by local police governing authorities. These authorities in larger municipalities are defined by statute and local politicians remain a minority; provincial appointees and members of the legal profession forming the majority. The structural insulation offered the police manager through local Boards of Police Commissioners thus surpasses that enjoyed by a British counterpart. Following British practice, an Ontario Police Commission also monitors the adequacy of municipal police forces, professional standards and force administrative practices. In those municipalities where politicians are gaining a significant foothold on the local police governing authority, the provincial agency is still available to oversee the independence and adequacy of the local police service.

These structural safeguards are complemented by legal protection. The police in Canada inherited from Britain the definition of the peace officer as an independent officer under the law. The courts thus are responsible for controlling the constable's exercise of power to ensure it conforms to the law, but politicians are not allowed to interfere. This principle has led to the requirement that correspondence or directives from politicians to police governing authorities be published in the agency's annual report. The independence of the police manager from partisan politics even surpasses that of a British counterpart. It would be interesting to see if that has led to a gulf between the values of the police and community in Canada similar to that found by Cochrane and Butler in their study of Britain and the United States.

The Potential of the Police Manager (Canada)

Policing in Canada has not experienced the extreme challenges of rapid urban transformation or of social unrest which provoked

crises in the police services of Britain and the United States. The traditional, centralized elite in Ontario limited the potential of local democracy. Partisan politics doesn't even play a significant role in elected municipal politics. Police insulation thus protects the police manager primarily from arbitrary action by an elected municipal politician.

In this relatively secure setting, the police manager enjoys the flexibility of following his/her American counterpart in experimenting with alternative police programs. Given the hierarchical nature of most Canadian forces, the devolution of disciplinary and administrative discretion is not readily accepted. "Needs assessments" precede the creation of "mini-stations". Foot patrols are known to enhance police-community relations but with scarce resources police managers reserve the right to deploy them from community to community as central priorities dictate. In one city, where they were established, neighbourhood constables were disciplined when found deviating from the force's traditional disciplinary code as they related to the local community. Unlike the American situation the political returns of successful community relations are not crucial to the survival of police managers. There are budgetary advantages to be gained from community support, but the "adequacy" of police resources and the police "legal" mandate are assured. In fact, the experience of Metropolitan Toronto in losing to community pressure when the force threatened to close a mini-station means that local community support once realized only has a marginal return for the overall police budget. The incentive to experiment given general public acceptance of the police is thus less than that found in the United States. Conversely, the potential for police leadership is greater than that available to either American or British police managers.

Protected from partisan politics, secure in their legal mandate, and yet in a society where experimentation along American lines is accepted, and the results of those experiments are widely known, the police manager has the best of both traditions. The police manager is free to pursue police initiatives designed to involve the community with or without the support of local politicians. In so doing, municipal politician/police coordination is not precluded, nor is the creation of police/community advisory committees. Police managers have been sensitive to American experiments and they have embarked on crime prevention and neighbourhood outreach projects. In so doing, they have held firmly to their hierarchically structured, insulated position. Police leadership thus often means direction rather than negotiation when external agencies are involved.

The potential of police leadership in Canada cannot be realized without serious introspection by senior police managers. Lobbying for public policy through institutionalized police interest groups poses no threat and is well done. The deployment of internal police resources and informing the public through the media have been transformed as a new generation of police

administrators rise to positions of authority within the police service. The challenge for police leadership is in the definition of the police service itself. Narrow professionalism rooted in the technical efficiency and response capacity of the force has its adherents. Buoyed by American cultural influences, crisis intervention, law enforcement and the mystique which accompanies them, force a vision of policing which eschews service. On the other hand, the citizen police officer preserving the peace through public service also has its adherents. Given problems of extending scarce financial resources and the increasing detail of labour contracts the police manager in setting priorities will choose between styles of policing.

The definition of policing also has an external dimension, grasped by a number of rising police managers. This relates to the place of the police in the broad spectrum of state/society relations. Recent emphasis on police/community advisory committees in the United Kingdom and the United States provide a model which police managers can groom to meet Canadian needs. Implicit are fundamental questions. Who should be involved? That means, what is the community which is to be policed and why is it significant in the realization of the broad mandate of preserving the peace and maintaining order. How should they be involved? Should the police work in cooperation with other groups? Should they control the proceedings? Why is the choice significant? Does it have an impact on the status of the police in the community? If so, does it also provide insights into the amount of involvement the police will permit in their mandate area? These questions and their answers will provide insights into the assumptions behind police perceptions of police-community relations. The action or experimentation which results will have an impact on state/society relations and the long term peace and order of the community.

To date, police managers in Canada have had time to respond to contemporary policing crises. They have experienced problems of increasing pluralism in urban centres, the growth of economically and socially marginalized groups, and violence from international terrorism, syndicated crime or anomie. Neighbourhood foot patrol, store front stations, and split-force techniques have all been introduced and monitored. Their impact is largely dependent on internal management style. Police managers, if they are to assume leadership in those thorny external political issues so fundamental to the challenges faced by their insulated British counterparts, must be willing to struggle with the internal structure of policing. Internal management style often reflects the capacity and style of an organization in dealing with its external environment. The potential of police leadership in Canada will be easier to define when police managers define their view of the police service. They have a unique opportunity to do so carefully and to do so intentionally. Legal and structural insulation reduces political threat. Proximity to American culture makes experimentation legitimate and provides numerous ideas. Good management, and maybe good luck, has avoided the dislocation and crisis atmosphere generated by the recent racial riots in Britain

and violence in the United States. In so doing, an iterative journey with politicians and the community would offer an opportunity to address the fundamental challenges of preserving the peace and facilitating or at least not bottling up the forces of change in the Canadian polity.

The Police Today

The modern liberal, democratic states studied share a common emphasis on the rule of law. The legal framework defines how power is exercised by the state on society. Under the law, all people are equal. Thus individual rights, private property, freedom to compete in the economy and freedom to make personal choices, all are fundamental characteristics of our environment. The legal mandate of the police reflects these values. The police power is defined and controlled by law, all members of the public are theoretically equal, and as long as they don't break the law they are free to do as they choose. The law sets the limits on discretion, or an individual's control of private property. Once a law is broken, order can be enforced.

This formal model sets the general context for policing. But, in substance, policing relates to a diverse society. The law sets standards but their impact on different ethnic communities, economic classes or age groups may differ significantly. In preserving the peace, or maintaining order, the police bridge the reality of diversity with the reality imposed by the legal model of equality.

Scarce police resources add another factor. Police managers have been forced to be thrifty and, especially in the United States, to rely on political support in budget negotiations. Programs have been introduced to utilize police resources as efficiently as possible: screening calls, setting levels of probable success before detective resources are deployed or cases pursued in the courts, targeting police resources. Such budgetary and operational devices fall within the realm of management in the public and private arenas. Given the visibility and emotional baggage which accompanies calls for police service, such screening provokes public debate of implicit management priorities.

Such debate in a free enterprise economy has had a direct impact on the structure of the police service. Those with money can hire supplementary private police services. The demand for security has made private policing a growth industry. W. Walsh and E. Donovan (1985) describes the use of private police by the developer of Starrett City in New York. In that case, once the development was complete tenants were protected by a private security firm. Access was controlled. Crime rates were below those of the surrounding community and tenants threatened to leave if policing reverted to the public police. The tenants had traded some of their individual freedom or privacy for security.

In Montréal, Québec, a wealthy community within the Urban Community hired its own police force to supplement the metropolitan force. These by-law enforcement officers developed neighbourhood visibility, offered residents a feeling of security and operated independent of the Metropolitan force. Tension appeared from time to time and relative jurisdiction had to be defined. The suburban force was paid by the residents of the community and thus reflected their freedom of choice. At a more local level, most cities have wealthy enclaves where residents hire a security guard or service to check their residences during vacation periods.

The police manager thus coexists with private police or security agencies, hired by individuals to provide services in excess of the regular community service. The spread of such private firms has caused concern among some police managers. They are not professional police, although many force members may have retired to them. Their services are less expensive than public police. They are not constrained by the law in the same way as peace officers since they are protecting or operating on private property. In Canada and the United Kingdom these private agencies are regulated by the state. As pluralism becomes more significant in urban centres the police manager will have to address the character of police services and public and private social control exercised by the state and communities within police force jurisdiction.

Summary

The challenge of diversity can be met by moving back before the dawn of the modern state where communities assumed the right to regulate their own affairs before the hallmote. Boroughs did the same at the town meeting and before the municipal court. Resolutions often preceded the presentation of grievances at the Sheriff's tourn. Representatives to senior levels of government were selected at those gatherings. Self-government was granted local residents if they wished to pay for the privilege. Custom defined the norms of conduct in stable communities. The cost of dispute resolution was covered in the sentence. Fines were paid to the Steward or local justice. It was not until Sheriffs started to make windfall profits from the system that the King moved in and took direct control of the local royal courts. When a community was self-governing, fines or the proceeds of justice were allocated to the poor or to meet community needs. This diversity was accepted, and controlled since arbitrary action by the powerful could be appealed to the Crown by Quo Warranto proceedings. Conversely, if a community did not meet its obligations it was fined.

Today, a hierarchically structured, impartial police service dispenses the Queen's justice in the name of the state and under the law. Private police are being used with greater frequency to patrol private property. Individuals, like the tenants at Starrett City, are foregoing personal rights in return for greater

perceived security. The Manor is being reborn. Tenants associations have an ancestry and a place. Wealthy suburbs are supplementing public police services through the employment of by-law enforcement officers. Diversity in the structure of the broad, loosely defined, police service reflects diversity in the community. In a liberal democracy the wealthy can use their money to supplement public services.

This tendency challenges equality as a value of liberal democracy and the modern state, but it is reminiscent of earlier times. Its ancestry, however, permits the police manager to learn from the development and address it if police leadership is to harness the resources of society to meet its broad social mandate.

A second practice common in the murky era, before the modern state, has recently reappeared. The success of the Grameen Bank in Bangladesh in lending money to peasants attracted the attention of the business community. The bank realized a 98 per cent recovery rate from loans to a community other established banks refused to consider credit worthy. The method used was to have aspiring borrowers grouped in units of five. Two of the five were given loans. Once they had established their credit worthiness by making regular payments, the next two received their loans. Finally, the last peasant received a loan when the others started repaying theirs. Once a loan was repaid, a second could be sought. The group were responsible for the credit standing for each other. Collective liability restored the onus to individuals for their peers, and encouraged repayment (Stewart-Patterson, 1987: B19).

The scheme is a rediscovery of community responsibility under the groups of 10 or a hundred. Such responsibility challenges the individualistic assumptions of our ideology. It has worked, however, in reverse through protection schemes in ethnic communities. The preservation of the peace in diverse urban communities through ethnic structures working within the legal framework has interesting possibilities. Such response to diversity under the law provide a challenge for police managers as they address the demands of complex urban communities. In Canada the potential autonomy of native communities offers an opportunity for testing such social devices.

Police leadership within the legal framework of the modern state can draw on the diversity of earlier eras to meet the challenges of pluralism. In Canada, such flexibility will challenge the hierarchical management assumptions of the insulated, impartial police service. A broader vision of community policing is fraught with danger, however. The challenge of police leadership will be to steer a course, cautiously and in consultation with others including politicians, community groups, members of the judicial system, the marginalized and the elite to ensure arbitrary power is controlled by the law, while diversity is acknowledged in the community. In an era when the state is eclipsed by international terrorism, ethnic conflict on a global scale,

international crime of a financial and drug nature, the recognition of a community role in the preservation of the peace seems appropriate. This challenge awaits the police. Already, facing problems in police/community relations, the police manager is in an excellent position to address these problems in a constructive way.

Conclusion

The challenge facing police leadership in the United Kingdom, the United States and Canada is dependent on the political and legal context in which the police manager works. The challenges of maintaining order, preserving the peace, protecting the persons and property of individuals and preventing crime are common. The importance of responding to fundamental forces of change so that the society and the state are allowed to evolve without the necessity of experiencing the dislocation of social revolution, as bottled-up dislocations are dissipated, is an ideal for the long term preservation of the peace. The short term tranquility of an elite and the long term peace of a society thus may not be the same. The style of policing as individuals encounter the rules of the state is central to the tenor of state/society relations in the short run.

In a diverse community, lessons from before the dawn of the modern state, offer the potential for diversity within policing to reflect the diversity in society. Such flexibility challenges the centralized, hierarchical structure which has characterized the impartial "new police". It complements the discretion granted the constable under the law. Police managers are challenged in Canada and the United Kingdom by the need to adapt the police service to meet the challenges of pluralistic society. In the United States, police managers, being more closely linked to politics and not enjoying structural and legal protection to the same extent, have professional standards as well as alternate delivery systems to address.

As citizens, the question of control remains crucial. If the police can adopt methods of social control which reflect the diversity of our urban communities, the monitoring of the exercise of power will require a new level of police managers. That person must be devoted to monitoring the methods used to preserve the peace in the name of the individual, not under law alone since legal control requires a complaint, but in an organizational, procedural sense. This new mandate might add meaning to the role of the present police governing authorities. Already sensitive to partisan political interference, these bodies could use their access to the media and relationship to the public police to ensure individual rights were not jeopardized while diversity was recognized in our formal police system. In the United States, such agencies might help solve some of the problems surrounding police independence. The fundamental question remains: How much do we trust the public in a democracy, and how much must we protect them from themselves? The power we allocate to such a police governing body is directly related to our answer to the question.

BIBLIOGRAPHY

- Adams, G. and H. Stephens
1926 Select Documents of English Constitutional History. New York: Macmillan.
- Alderson, John
1979 Policing Freedom. Estover: MacDonald and Evans.
- Alderson, John
1985 "Police and Public Order in Europe", in John Roach and Jurgen Thomanek, (eds.). Police and Public Order in Europe. London: Croom Helm.
- Allen, Sir Carleton Kemp
1953 The Queen's Peace. London: Stevens and Sons.
- Ames, Walter L.
1981 Police and Community in Japan. Berkeley: University of California Press.
- Armitage, Gilbert
1932 The History of the Bow Street Runners 1729 - 1829. London: Wishart.
- Ault, W.O.
1930 "Some Early Village Bylaws", English Historical Review XLV: 208-231.
- Beard, Charles A.
1962 The Office of the Justice of the Peace in England. New York: B. Franklin.
- Benyon, John (ed.)
1984 Scarman and After. Oxford: Pergamon.
- Berkley, George E.
1970 "Centralization, Democracy and the Police," Journal of Criminal Law, Criminology and Police Science, 61: 309-312.
- Brogden, Michael
1982 The Police: Autonomy and Consent. New York: Academic Press.
- Brown, Lee P.
1985 "Police-Community Power Sharing," in W.A. Geller (ed.). Police Leadership in America: Crisis and Opportunity. New York: American Bar Association and Praeger Publications.
- British Parliament
1837 Hansard. 36, February 20: 698-701.

- Burpo, John H.
1971 The Police Labor Movement: Problems and Prospects. Springfield, Ill.: Thomas.
- Clark, John P.
1969 "Isolation of the Police: A Comparison of the British and American Situations," in R. Quinney (ed.), Crime and Justice in Society. Boston: Little Brown.
- Cochrane, Raymond and Anthony Butler
1980 "The Values of Police Officers, Recruits and Civilians in England," Journal of Police Science and Administration, 8: 205-211.
- Crook, David
1965 American Democracy in English Politics 1815-1850. Oxford: Clarendon Press.
- Dahrendorf, Ralph
1985 Law and Order. London: Stevens and Sons.
- de Jouvenal, Bertrand
1957 Sovereignty. (Trans. J.F.H. Huntington). Chicago: University of Chicago Press.
- de Tocqueville, Alexis.
1841 Democracy in America. New York: Langley.
- Edelman, J. Murray
1964 The Symbolic Uses of Politics. Chicago: University of Illinois Press.
- Ericson, Richard
1982 Reproducing Order: A Study of Police Patrol Work. Toronto: University of Toronto Press.
- Finlayson, Geoffrey
1970 Decade of Reform: England in the Eighteen Thirties. New York: Norton.
- Fraser, Donald M.
1985 "Politics and Police Leadership: The Views from City Hall", in W.A. Geller (ed.). Police Leadership in America: Crisis and Opportunity. New York: American Bar Association and Praeger Publishers.
- Geller, William A. (ed.)
1985 Police Leadership in America: Crisis and Opportunity. New York: American Bar Association and Praeger Publishers.
- Goldstein, Herman
1977 Policing a Free Society. Cambridge, Mass: Ballinger Publishing.

- Goldstein, Herman
1979 "Improving Policing: A Problem-Oriented Approach," *Crime and Delinquency*, 25: 236-258.
- Goldstone, Jack
1983 "Capitalist Origins of the English Revolution: Chasing a Chimera", *Theory and Society*, 12: 143-180.
- Grindstaff, Carl
1974 *The Administration of Justice in Canada*. Toronto: Holt, Rinehart and Winston.
- Harding, A.
1973 *The Law Courts of Medieval England*. London: Allan and Unwin.
- Hann, Robert G. et al
1985 "Municipal Police Governance and Accountability in Canada: An Empirical Study," *Canadian Police College Journal*, 9: 1-85.
- Harring, Sidney L.
1983 *Policing a Class Society*. New Brunswick, N.J.: Rutgers University Press.
- Homans, George
1960 *English Villagers of the Thirteenth Century*. New York: Russell and Russell.
- Johnson, Cuthbert W.
1837 *The Life of Sir Edward Coke*. (2 Vols.). London: H. Colbourn.
- Kelling, George L.
1985 "On the Accomplishments of the Police," in M. Punch (ed.), *Control in the Police Organization*. Cambridge, MA: The M.I.T. Press.
- Kelling, George L.
1985 "Neighborhoods and the Strength to Control Crime: Inherent or Imposed," (Unpublished paper).
- Kelling, George L.
1987 "Acquiring a Taste for Order: The Community and the Police". *Crime and Delinquency*, 33: 90-102.
- Lee, W.L. Melville
1971 *A History of Police in England*. Montclair, N.J.: Patterson Smith (Originally published 1901).
- Loree, Donald J.
1985 "Police in a Plural Society", *Canadian Police College Journal*, 9: 391-412.

- Loree, Donald J.
1986 "The Nature of Community-Based Policing in Canada," (unpublished paper).
- Mather, F.C.
1959 Public Order in the Age of the Chartists. Manchester: Manchester University Press.
- Marenin, Otwin
1985 "Police Performance and State Rule", Comparative Politics. October: 101-122.
- McDonald, W.F.
1985 "Of Overhill and Blighted Trees: A Rejoinder to McNamara and Alschuler", in W.A. Geller (ed.). Police Leadership in America: Crisis and Opportunity. New York: American Bar Association and Praeger Publishers.
- McDougall, A.K.
1971 Policing in Ontario. (Unpublished Ph.D. Dissertation). Toronto: University of Toronto.
- Miller, Wilbur R. Cops and Bobbies: Police Authority in New York and London 1830-70. Chicago: University of Chicago Press.
- Morgan, R.
1985 Setting the P.A.C.E.: Police Community Consultation Arrangements in England and Wales. Bath: Centre for the Analysis of Social Policy, University of Bath.
- Nordholt, Erik and Ries Straver
1983 "The Changing Police", in M. Punch (ed.). Control in the Police Organization. Cambridge, Mass: The M.I.T. Press.
- Ontario
1973 Task Force on Policing. Working Papers 1973. Toronto: Queen's Printer.
- Painter, D.
1949 The Reign of King John. Baltimore: Johns Hopkins Press.
- Punch, M. (ed.)
1983 Control in the Police Organization. Cambridge, Mass: The M.I.T. Press.
- Rankin, Hugh F.
1965 Criminal Trial Proceedings in the General Court of Colonial Virginia. Williamsburg: Williamsburg Research Studies.
- Reiner, R.
1985 The Politics of the Police. London: Wheatsheaf.
- Roach, John and Jurgen Thomanek (eds.)
1985 Police and Public Order in Europe. London: Croom Helm.

- Sacret, J.H.
1930 "The Restoration Government and Municipal Corporations",
English Historical Review, XLV: 232-259.
- Scarman, L.G.
1981 The Brixton Disorders 10-12 April 1981. Report on an
Inquiry by the Rt. Hon. The Lord Scarman, O.B.E. Cmd. no.
8427. London: HMSO.
- Skocpol, Theda
1978 States and Social Revolutions. Cambridge: Cambridge
University Press.
- Stewart-Patterson, David
1987 "Bank Lending to Bangladesh Poor a Trail-Blazer," Toronto:
Globe and Mail (July 9).
- Sutherland, D.W.
1963 Quo Warranto Proceedings in the Reign of Edward I
1278-1294. Oxford: Clarendon Press.
- Trojanowicz, Robert
n.d. An Evaluation of the Neighborhood Foot Patrol Program in
Flint, Michigan. East Lansing, MI: Michigan State
University.
- Tuck, Anthony
1985 Crown and Nobility 1272-1461. Oxford: Basil Blackwell.
- Ullman, Walter
1966 The Individual and Society in the Middle Ages. Baltimore:
The John Hopkins Press.
- Ullman, Walter
1974 The Principles of Government and Politics in the Middle
Ages. London: Methuen.
- Whebell, C.F.J.
1986 "The Upper Canada District Councils Act of 1841 as an
Instrument of British Colonial Policy," (Unpublished
paper).
- Williams, Alan
The Police of Paris 1718-1789. Baton Rouge: Louisiana
State University.
- Wilson, James Q.
Varieties of Police Behavior: The Management of Law and
Order in Eight Communities. Cambridge, Mass: Harvard
University Press.
- Wilson, James Q. and George L. Kelling
1982 "Broken Windows". The Atlantic Monthly, March: 29-38.